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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 142

UNITED STATES, PETITIONER

v.

HOWARD C. MYERS

No. 143

UNITED STATES, PETITIONER

v.

JOHN H. ARBLE

No. 144

UNITED STATES, PETITIONER

v.

CHARLES C. MARTIN

No. 145

UNITED STATES, PETITIONER

v.

WALTER O. PLITZ

No. 146

UNITED STATES, PETITIONER

v.

GEORGE H. SPITZ

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the Court of Claims (R. 47–57) are not yet officially reported.

JURISDICTION

The judgments of the Court of Claims were entered on February 1, 1943 (R. 57). A motion for a new trial was overruled on April 5, 1943 (R. 57). The petition for a writ of certiorari was filed on July 3, 1943, and was granted on October 11, 1943. The jurisdiction of this Court rests upon the provisions of Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTIONS PRESENTED

The principal question is whether, under Section 5 of the Act of February 13, 1911, as amended, customs inspectors who perform their regularly assigned tour of duty of not more than 8 hours per day and 44 hours per week, for which they have received base pay, may also recover from the United States extra compensation at approximately double the rate of base pay for such parts of that tour of duty as were performed on Sundays or holidays or between the hours of 5:00 p. m. and 8:00 a. m. If this question is answered in the affirmative, the subsidiary questions presented are—

(1) Whether Section 5 of the Act applies to customs inspectors employed at a bridge or tunnel; and

(2) Whether the base pay received by the customs inspectors, allocable to the period for which extra compensation was allowed, should be credited against such extra compensation.

STATUTES AND REGULATIONS INVOLVED

The applicable portions of the statutes involved are set forth in Appendix A, pp. 67–71; the applicable portions of the regulations involved are set forth in Appendix B, pp. 72-74.

STATEMENT

Twenty-seven customs inspectors at the port of Detroit, including the five respondents, brought separate suits in the Court of Claims to recover extra compensation to which they claimed to be entitled under Section 5 of the Act of February 13, 1911, as amended by the Act of February 7, 1920 (c. 61, 41 Stat. 402; 19 U. S. C. 267). The parties stipulated that the five claims here involved should serve as test cases for determination of the remaining twenty-two suits (R. 47).[1]

Each of the five respondents was employed by petitioner as a customs inspector at the port of Detroit between September 1, 1931, and August 31,

[1] There have since been filed an additional 150 cases, bringing the total number to 177. The total recovery sought is slightly over $2,000,000.

1937 (R. 39). During that six-year period they were on duty and rendered service at eight stations at the port of Detroit, where goods, merchandise, passengers, and baggage both arrived from and entered Canada[2] (R. 39–43). At six of the eight stations, traffic was open 24 hours per day; and at the other two,[3] ferries operated daily from 5:00 a. m. and 5:30 a. m. to 2:00 a. m. of the following day (R. 40–41). While each station was open, customs inspection was conducted continuously by three shifts of inspectors (R. 40–41). Their regularly assigned tour of duty consisted of 8 hours per day and 44 hours per week,[4] and for this each inspector was paid a base salary of $2,100 per year (R. 39).

During the six-year period between September 1, 1931, and August 31, 1937, some inspectors worked longer than 44 hours per week. Thus, at four stations[5] where continuous traffic was, the

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[2] The eight stations in question were the Detroit and Canada Tunnel, Ambassador Bridge, Michigan Central Tunnel, Wabash Railway Ferries, Pere Marquette Railway Ferries, Grand Trunk Railway Slip Dock, Detroit and Windsor Ferry, and Walkerville Ferry.

[3] Detroit and Windsor Ferry and Walkerville Ferry.

[4] This was made up of five days of 8 hours and one of 4. The 48-hour week in effect prior to March 3, 1931, had been reduced to 44 hours by the Saturday Half Holiday Law (46 Stat. 1482, 5 U. S. C. 26a), and so remained during the entire period here involved (R. 42).

[5] The passenger station at the Michigan Central Tunnel, the Wabash Railway Ferries, the Pere Marquette Railway Ferries, and the Grand Trunk Railway Slip Dock (R. 41).

rule and customs service was performed 24 hours per day, the inspectors ordinarily worked 52 hours a week (R. 42). For all services in excess of a 44-hour week, such inspectors, including respondents, were paid additional compensation at the overtime rates prescribed under Section 5 of the 1911 Act as amended (R. 43, 44, 45, 46). There is no dispute as to the adequacy of either the base pay for the regular shift or the extra pay for the additional hours (R. 43).

However, a portion of respondents' services during their regular daily 8-hour tours of duty in a 44-hour week was performed on weekdays between the hours of 5:00 p. m. and 8:00 a. m. and on Sundays or holidays. It was for the services so rendered that respondents sought recovery in the court below of overtime pay in addition to the base pay which they had already received (R. 43–46). The Court of Claims held that Section 5 of the 1911 Act, as amended, required that additional compensation at the overtime rate be paid by the United States for all services performed after 5:00 p. m. or on Sundays or holidays, even though within the regular tour of duty of 8 hours daily and 44 hours weekly (R. 46, 52). The court below accordingly entered judgment in favor of each respondent for approximately double the base pay already received by him on account of such

services during the six-year period in question[6] (R. 57). The court declined to allow the Government credit against this amount for the regular base salary which had already been paid to respondents for the same services[7] (R. 52). Judge Madden dissented from the part of the decision which awarded overtime compensation to the respondents employed at the Ambassador Bridge and the Detroit and Canada Tunnel, on the ground that neither a bridge nor tunnel was a "vehicle" within the meaning of the 1911 Act, as amended, and Section 450 of the Tariff Act of 1930, or an "agent" of the users of its facilities for the purpose of requesting the special unlading license and giving bond (R. 55–56).

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[6] The following amounts were found due to the several respondents (R. 57):

Howard C. Myers	$13,759.41
John H. Arble	10,219.23
Charles C. Martin	12,225.32
Walter O. Plitz	12,277.94
George H. Spitz	10,267.68

[7] The following base pay was found to have been paid to the several respondents for the periods for which the overtime compensation was allowed (R. 43, 44, 45, 46):

Howard C. Myers	$6,469.93
John H. Arble	4,972.76
Charles C. Martin	5,650.44
Walter O. Plitz	5,833.55
George H. Spitz	4,759.52

SPECIFICATION OF ERRORS TO BE URGED

The Court of Claims erred:

(1) In holding that under Section 5 of the Act of February 13, 1911, as amended, work performed by customs inspectors between 5:00 p. m. and 8:00 a. m. on weekdays, or at any time on Sundays or holidays, constitutes "overtime" for the purpose of overtime rates of pay, even though such work was included in and not in excess of their regularly assigned tour of duty of not more than 8 hours daily and 44 hours weekly.

(2) In holding that Section 5 of the 1911 Act as amended does not confer power upon the collector of customs to establish regular 8-hour tours of duty within a 44-hour week, comprising in whole or in part work between 5:00 p. m. and 8:00 a. m. on weekdays, or work on Sundays or holidays, without rendering the United States liable for the payment of overtime compensation on account of such regular duty.

(3) In holding that the United States was liable for overtime pay to customs inspectors, even though the owner, agent, or consignee of the vessel, conveyance or vehicle involved had not requested or received a special license to lade or unlade at night, Sundays, or holidays and had not executed a bond to pay to the collector of customs the overtime compensation to be turned over to customs inspectors.

(4) In holding that a bond to pay the overtime compensation of customs inspectors under the 1911 Act as amended and Section 451 of the Tariff Act of 1930 could be exacted from an international bridge or a vehicular tunnel company, and that customs inspectors at the bridge or tunnel came within those provisions.

(5) In failing to give the United States credit, against the overtime compensation allowed on account of services rendered at night or on Sundays or holidays, for the regular base salary already paid to respondents on account of the same services.

(6) In failing specifically to find as facts that the collector of customs, in order to meet the requirements of continuous service necessitated by continuous international traffic at the port of Detroit, assigned customs inspectors to work daily 8-hour shifts within an established 44-hour week; that services rendered beyond such assigned tours of duty were performed by the customs inspectors at the request of the carrier under a special license from the collector; and that customs inspectors were paid for such overtime services from funds paid to the collector by the carrier for such additional work.

(7) In entering judgment for the respondents.

SUMMARY OF ARGUMENT

I

Section 5 of the 1911 Act, as amended, imposes no obligation on the United States which would sustain a suit in the Court of Claims under the Tucker Act (28 U. S. C. 250 (1)). Section 5 directs the Secretary of the Treasury to "fix a reasonable rate of extra compensation for overtime services" of customs employees, but the obligation to pay the extra compensation is imposed solely upon "the master, owner, agent, or consignee" of the vessel or other conveyance for which the services are required. The collector is required to pay such compensation to the employees only after receiving it from the carrier, and while the compensation paid to the respondents for their actual overtime services was so received, the compensation, recovery of which was allowed below, was never so received. The legislative history of the 1911 Act and its amendments likewise discloses that Congress intended to impose solely upon the carrier, and not upon the United States, the obligation to pay extra compensation, and the administrative practice bears out this intention. For a period of more than twenty-five years, including the entire period here in suit, customs employees, including respondents, were paid overtime compensation only out of the special fund collected by the collector of customs from

the carriers involved. A cause of action against the United States, cognizable in the Court of Claims, cannot be predicated on the failure of the collector to charge the carriers overtime compensation.

Although the appropriation acts of 1936 and later years allowed the Bureau of Customs to use Government funds to pay overtime compensation to customs inspectors in advance of collection from the carriers, these acts were permissive only and did not purport to impose any liability upon the United States for the payment of such compensation. This construction is illustrated by the fact that throughout the period involved in this action—a period extending for more than a year after adoption of the 1936 appropriation act—the collector at the port here concerned continued the long-established practice of collecting the compensation from the carriers before paying it to the inspectors.

II

The "overtime services" compensable under Section 5 of the 1911 Act, as amended, are those rendered in addition to and not as part of the regularly assigned shift. This accords with the generally accepted meaning of the term and squares with its characterization in the same section as services performed by employees "who may be required *to remain* on duty." This construction of Section 5 is fully supported by the legislative his-

tory of the statute and of later bills *in pari materia* with it.

The evil against which the customs overtime laws were directed, beginning with the first statute in 1873, was the practice of requiring customs inspectors to remain on duty after regular working hours to attend at the unlading of vessels desiring expeditious service. This practice resulted in private negotiation between shipowners and inspectors for the payment of additional compensation, with consequent favoritism and other irregularities. At the debates and hearings in Congress on the 1911 Act and on subsequent legislation broadening the scope of the overtime services compensable at the expense of the carrier, there was virtual unanimity of opinion, by proponents and opponents of the legislation alike, that overtime was payable under the 1911 Act only for additional services performed by customs employees who had already completed their regular shift.

At certain border ports where the traffic was continuous, requiring 24-hour customs inspection service, the practice arose at an early date of assigning separate shifts or platoons of customs inspectors, each working a regular daily shift six days per week; and at no time since the commencement of that practice has the Treasury Department ever collected from a carrier or paid to the employees extra compensation for services performed as part of a regular tour of duty, even

though rendered at night, on Sundays, or on holidays. This administrative practice was repeatedly brought to the attention of Congress at the hearings and debates on the 1911 Act and subsequent legislation, and representatives of both carriers and customs employees conceded its propriety. Indeed, in 1920 Congress expressly approved the practice by adding a proviso to Section 5 of the 1911 Act, authorizing the Treasury Department to establish regular shifts at hours other than 8 a. m. to 5 p. m., where the prevailing working hours at the port in question so required. An attempt in 1937 to prohibit the establishment of regular working hours on Sundays or holidays proved unsuccessful, and a 1938 amendment confirmed the authority of the Secretary of the Treasury to establish regular shifts on such days within a six-day week. The contention of the group of customs inspectors at Detroit, exemplified by the claims in suit, constitutes the first intimation in the voluminous history of the 1911 Act and its amendments that overtime compensation is payable for part of a regular eight-hour shift within a six-day week, merely because it was performed after 5 p. m. or on a Sunday or holiday.

III

Whatever the meaning of the term "overtime services" in the 1911 Act, as amended, it does not apply to customs services rendered at a bridge or tunnel. Section 5 of the 1911 Act, read together

with the related Section 451 of the Tariff Act of 1930, applies solely to customs services rendered in connection with the lading or unlading of vessels, other conveyances, and vehicles. A bridge is neither a vessel nor a conveyance (*International Ry. Co.* v. *Davidson*, 257 U. S. 506) and would seem equally excluded from the normal understanding of the word "vehicle" and from the statutory definition of that term as a "contrivance used * * * as a means of transportation" in water or on land. Those most concerned with overtime compensation for customs inspectors—the associations of customs employees and the carriers footing the bills—were unanimous in the belief, expressed at the hearings in 1937 on a bill to broaden the coverage of the 1911 Act, that a bridge was not covered by the overtime statute as it existed in 1937. For the same reasons an analogous stationary structure such as a tunnel would be excluded from the 1911 Act, as amended. This finds support in the consistent administrative practice not to require from either a bridge or a tunnel a special license or bond for the payment of extra compensation, and not to charge a bridge or tunnel, or to pay to customs employees stationed there, any overtime compensation under the 1911 Act, as amended.

IV

If overtime compensation was payable for such part of a regular tour of duty as was rendered by

respondents after 5 p. m. or on Sundays or holidays, the United States is entitled to be credited with the base pay already paid by it to respondents for the same services. Otherwise respondents would receive compensation at more than three times the base pay for a regular tour of duty of 8 hours per day and 44 hours per week. This result is not only directly opposed to the 1911 Act as interpreted by its sponsor, but results in the anomaly of an employee receiving $2,100 per annum for an eight-hour shift if performed by day, but more than $6,300 per annum for an identical shift if performed at night or on Sundays or holidays. This disparity, without precedent in Government or private industry, is too startling to be attributed to Congress in the absence of more specific statutory direction. Certainly the administrative practice, since the earliest overtime statute, has been to collect and pay extra compensation only for services for which no base pay was received by the employee.

ARGUMENT

Section 450 of the Tariff Act of 1930 (c. 497, Title IV, 46 Stat. 590, 715; 19 U. S. C. 1450) provides that, "No merchandise, baggage, or passengers arriving in the United States" from a foreign place "shall be unladen from the carrying vessel or vehicle on Sunday, a holiday, or at night" (defined by Section 401 of that Act as the time from 5 p. m. to 8 a. m.) "except under special license

granted by the collector [of customs] under such regulations as the Secretary of the Treasury may prescribe." Section 451 provides that, "Before any such special license to unlade shall be granted, the master, owner, or agent, of such vessel or vehicle shall be required to give a bond * * * to indemnify the United States for any loss or liability [from] the granting of such special license and to pay the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading," in accordance with Section 5 of the 1911 Act, as amended. (See Appendix A, pp. 69–71.)[*] Section 5 of the 1911 Act, as amended, requires the Secretary of the Treasury to "fix a reasonable rate of extra compensation for overtime services of inspectors *, * * and other customs officers and employees who may be required to remain on duty" between 5:00 p. m. and 8:00 a. m. "or on Sundays or holidays, to perform services in connection with the lading or unlading of cargo, or * * * examination of passengers' baggage."[**] Such "extra

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[*] A special license to unlade had been granted by the collector to the carriers here involved and a bond obtained from them in every case in which additional compensation was due and paid to the inspectors for services in excess of 8 hours per day and 44 hours per week rendered at night or on Sundays and holidays (R. 42–43).

[**] Section 5 requires that such rates "be fixed on the basis of * * * two additional days' pay for Sunday or holiday duty" and, with certain limitations, "one-half day's additional pay for each two hours * * * that the overtime extends beyond" 5:00 p. m. (See Appendix A, p. 67.)

compensation shall be paid" to the collector of customs "by the master, owner, agent, or consignee of such vessel or other conveyance whenever such special license * * * shall be granted," and the collector "shall pay the same to the several customs officers and employees entitled thereto according to the rates fixed therefor by the Secretary of the Treasury."[10] (See Appendix A, pp. 67–68.)

The court below held that these statutory provisions entitled customs inspectors at the port of Detroit to recover directly from the United States, in addition to the base pay which they had already received, pay at the overtime rate fixed in the statute for such portions of their regularly assigned shift of 8 hours per day and 44 hours per week as were performed between 5:00 p. m. and 8:00 a. m. on weekdays, or on Sundays or holidays. We contend that this is contrary to the language of the statutes, to the congressional intention underlying them, and to the long-established administrative practice. We further contend that whatever the scope of the provision for extra compensation, the statutes have no application to customs employees at a bridge or tunnel. Finally, even if extra compensation is payable for

[10] Throughout the period here in question, the extra compensation for customs services in addition to 44 hours per week was first collected by the collector of customs from the carrier for whom the overtime services were performed and then remitted by the collector to the inspectors by check drawn against the fund so collected (R. 42).

the services held by the Court of Claims to be "overtime," we contend that there should at least be deducted from such extra compensation that part of the base salary already paid to the inspectors which is allocable to such services.

I

No direct obligation is imposed on the United States by Section 5 of the 1911 Act, as amended, nor by the Tariff Act of 1930, to pay extra compensation for overtime services of inspectors

At the outset the question arises whether the statutes in question create any obligation on the part of the United States to pay the extra compensation sought in these suits, irrespective of the meaning and scope of "overtime services" for which extra compensation is payable.[11] The asserted jurisdictional basis for these suits, apparently brought under the Tucker Act (Section 145 (1) of the Judicial Code, 28 U. S. C., 250 (1)), is that the claims for extra compensation are "founded upon" a "law of Congress," *viz.*, the 1911 Act, as amended, and the Tariff Act of 1930 (R. 2–7).[12] But nothing in those statutes creates an in-

[11] This point was raised below (Brief for United States in Court of Claims, pp. 232–235), and although only inferentially assigned as error in the petition for certiorari (cf. Specifications of Errors No. 2 and 3, Pet. 7), it is argued here because it appears to be jurisdictional in nature. Cf. *Merritt* v. *United States*, 267 U. S. 338, 340–341; *United States* v. *Griffin*, 303 U. S. 226, 229.

[12] Respondents did not assert "any contract, express or implied, with the Government of the United States," and there

dependent obligation on the part of the United States to pay the extra compensation for which suit was brought, an obligation essential to recovery. See *United States* v. *Hvoslef*, 237 U. S. 1, 10; *Medbury* v. *United States*, 173 U. S. 492, 497; *Baltimore Mail Steamship Co.* v. *United States*, 76 F. (2d) 582 (C. C. A. 4), certiorari denied, 296 U. S. 595.

Section 5 of the 1911 Act, as amended, orders the Secretary of the Treasury to "fix a reasonable rate of extra compensation for overtime services" of customs employees, but the extra compensation is to be paid "by the master, owner, agent, or consignee" of the vessel or other conveyance for whose lading or unlading the "overtime services" are required. Under Section 5, the payment is to be made by the carrier to the collector, who is then required to "pay *the same*" to the employees entitled thereto.[13] The legislative history

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is no basis in the record for any such assertion. A contract implied in fact—the only type of implied contract within the jurisdiction of the Court of Claims under the Tucker Act (*Tempel* v. *United States*, 248 U. S. 121; *Sutton* v. *United States*, 256 U. S. 575, 581)—is clearly precluded in the instant case. All respondents were employed at a time when 24-hour inspection services were furnished at the port of Detroit, by three shifts of inspectors on duty 8 hours per day and 44 hours per week, and no overtime was paid for such regular tours of duty whether or not they occurred at night, on Sundays, or on holidays (R. 60, 66, 67; 68, 69). Respondents must have known of this long-established practice and must be taken to have accepted employment on that basis.

[13] Section 451 of the Tariff Act of 1930, requiring a bond from the carrier for whom overtime services are rendered, provides that it shall be "conditioned to indemnify the United

of the 1911 Act as originally enacted, and of later measures relating to overtime compensation for customs inspectors, makes it plain that the obligation to pay the extra compensation was intended to be imposed solely upon the carrier and not upon the United States, and that the only obligation imposed upon the Government was the requirement that the collector of customs distribute to the employees their extra compensation out of the fund collected from the carriers. This was emphasized at the hearings before the House Ways and Means Committee on the bill which became the 1911 Act, and which extended to "storekeepers, weighers, and other customs of-

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States for any loss or liability which might occur or be occasioned by reason of the granting of such special license *and to pay the compensation* and expenses of the customs officers and employees assigned" to overtime duty, "in accordance with" Section 5 of the 1911 Act, as amended. This does not connote that the United States must pay the compensation in the first instance, for the "loss or liability" which might result from granting the special license must be read to cover items distinct from the overtime "compensation" of customs employees; otherwise, an entire phrase in the section becomes surplusage. Examples of "loss" occasioned by the special license, other than overtime compensation payable to employees, may readily be cited, such as revenues lost through smuggling as a result of the granting of the special license. (See Hearings, S. Committee on Finance, 71st Cong., 1st sess., on H.R. 2667, p. 509; Appendix C, pp. 126–127.) The reference to Section 5 of the 1911 Act, as amended, also indicates that the bond secured from the carrier is to cover the obligation imposed on the carrier by that Act. Of course, should the decision below stand, the bond would require the carrier to reimburse the United States to the extent the judgment covered periods to which the bond was applicable.

ficers and employees" the provisions for extra compensation for night services theretofore available only to customs inspectors. Congressman Moore, the proponent and manager of the measure, stated to the Committee (Hearings on H. R. 9525, 61st Cong., 2d sess., pp. 461–463):

> * * * So far as the payment of those not inspectors is concerned, I think the mind of the committee should be disabused of the fact that the Government would be financially affected by the passage of this proposed law. The owner of the vessel pays for this extra work. He is perfectly willing to pay for the extra work. *Not a cent comes out of the Treasury, and you would not be legislating at all with regard to the finances of the Government.* The owner of a vessel comes in and wants to get away, and he asks the privilege of unlading at night between sunset and sunrise, the hours proscribed under the law. He offers a bond and is perfectly willing to pay the inspectors for whom compensation is provided at the discretion of the Secretary of the Treasury, but he can not pay, except in an indirect way, the weighers, the storekeepers, and the watchmen. [Emphasis supplied.]

That the employees were to be paid solely out of the fund collected from the carriers was expressly brought out (Hearings, pp. 464–465):

> Mr. MOORE. I want to say that my understanding of this bill and of that provi-

> sion is that in order to facilitate commerce and to give convenience to the shippers, we have proposed to accommodate them merely in the matter of this night service at their own expense * * *. The only purpose is, as I understand it, to enable a man who wants something done for himself, the owner or agent of a vessel, to say, "I would like the privilege of unlading at night; I would like to use the twelve hours I am now prevented from using; I would like the opportunity of getting away, and I am perfectly willing to pay, through the proper officers, whatever the extra cost may be"; and my purpose, as the proponent of this bill, is to have that fund so created distributed at the instance of the Secretary of the Treasury through the collector of the port * * *. If you put them under the Secretary of the Treasury and systematize the business you have a check upon every dollar received and expended and you have a uniform system of payment which it seems to me is extremely desirable and would tend to avoid abuse.

Because a provision in the bill as introduced, providing for overtime compensation for boarding officers, left some doubt as to whether the carriers or the Government would pay such compensation, the bill was amended explicitly to provide for payment of the compensation "by the master, owner, agent, or consignee of such vessels" (Hearings, pp. 463–465). The same point was

made by the representative of "the customs inspectors and their various associations all over the country," at the hearings before a Subcommittee of the House Ways and Means Committee on the bill which became the Act of February 7, 1920, amending Section 5 of the 1911 Act to its present form (Hearings on H. R. 6577, 66th Cong., 1st sess., p. 13):

> Mr. BOND. * * * You understand the Government pays no overtime. This is overtime which is paid by the steamship companies. * * * this is not costing the Government anything, and the steamship people make no objection to this, and never have made any. * * *

And in the debates on this bill in the Senate, its sponsor stated that the United States would incur "no expense whatever" for the overtime compensation because "the shipowner would pay the collector for it, and then, in turn, the men would be paid by the Government. The scheme * * * meets with the approval of the Treasury Department and the Shipping Board as well; it is also satisfactory to the men who work in the Customs Service" (59 Cong. Rec. 640).[13] The

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[13] Appendix C, p. 90. See, to the same effect, H. Rep. 1657, 61st Cong., 2d sess.; 59 Cong. Rec. 2175, 2178; Hearings, H. Committee on Ways and Means, on H. R. 9525, 61st Cong., 2d sess., pp. 462–465, 469, 473 (Appendix C, pp. 94, 97–98, 78–80).

See also, with respect to later statutes concerning overtime compensation for customs employees, the insistence that the

principal reasons for placing the liability upon the carriers were not only that the carriers, who benefited by the overtime services, should in fairness bear the cost, but also that imposition of the extra compensation would act as a deterrent to unnecessary requests for extra service.[15] For the same reasons, representatives of the Customs Inspectors Association opposed a later bill to place upon the United States the direct obligation to pay overtime at certain ports (Hearings, S. Committee on Commerce, on S. 1504, S. 1774, and S. 2188, 67th Cong., 1st and 2d sess., pp. 17, 22, 38–39. 134, Appendix C, pp. 99, 100–101, 104–105, 115), and the bill was not reported out of committee.

The administrative practice under the 1911 Act, as amended, during the entire six-year period in suit (R. 42)—and for many years prior thereto—likewise accords with this construction of Section 5, the employees being paid for overtime services only out of the special fund paid to the collector by the carriers involved.[16] The failure of the col-

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carrier and not the Government pays it. Hearings, S. Committee on Finance, on H. R. 2667, 71st Cong., 1st sess., pp. 481, 483, 502, 504–505, 509, 518–519; Hearings, H. Committee on Ways and Means, on H. R. 6738, 75th Cong., 1st sess., pp. 87, 92 (Appendix C, pp. 120, 122, 125–126, 128–129, 133, 135).

[15] See Hearings, S. Committee on Finance, on H. R. 2667, 71st Cong., 1st sess., Vol. 17, p. 483 (Appendix C, p. 121).

[16] The court below found that during the entire period here involved, the collector of customs collected the extra compensation from the carriers and then remitted the funds to the inspectors by check drawn against the fund so collected (R. 42). This had been the consistent practice for many

lector of customs to collect overtime compensation, which when collected must be paid over to the employees, would not create a cause of action against the United States cognizable in the Court of Claims under the Tucker Act. Cf. *United States* v. *Algoma Lumber Co.*, 305 U. S. 415, 418–419, 423.

Nor was any direct obligation to pay the compensation imposed upon the United States by the appropriation act which, in 1936, made funds available to the Bureau of Customs for payment of the extra compensation directly to customs employees.[17] Besides the fact that the appropriation act was as free as the 1911 Act of any *direction* to the Bureau of Customs to pay the compensation (as contrasted with permission to do so), it required that the payment "at the expense of the parties in interest" shall be "in accordance with the provisions of Section 5" of the 1911 Act, as amended, "and Section 451 of the Tariff Act,

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years. See, for example, the suit brought by a collector of customs against a ferry company for the use and benefit of certain customs employees, to recover extra compensation for overtime services rendered by them at night, on Sundays and holidays (*Ferguson* v. *Port Huron & Sarnia Ferry Co.*, 13 F. (2d) 489 (E. D. Mich.)).

[17] The First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1597, 1636), made the appropriation for the Bureau of Customs "available for the payment of extra compensation earned by Customs officers and employees, for overtime services, at the expense of the parties in interest, in accordance with the provisions of section 5" of the 1911 Act, as amended, "and section 451 of the Tariff Act, 1930." A similar provi-

1930."[9] The appropriation act can at most be deemed congressional permission for the initial payment of the extra compensation by the United States, as an arrangement for the convenience of the employees, it can hardly be read to create a claim cognizable in the Court of Claims as one founded upon a "law of Congress." This is confirmed by the fact that throughout the period covered by these suits, and for more than a year after the 1936 appropriation act was passed, the collector at Detroit continued the long-established practice of collecting the extra compensation from the carriers before paying it over to the inspectors (R. 42).

II

"Overtime services" rendered after 5 p. m. and on Sundays or holidays, compensable under Section 5 of the 1911 Act, as amended, mean those in addition to the regularly assigned shift

The court below held that the "extra compensation for overtime services" of customs employees "who may be required to remain on duty between the hours of 5 p. m. and 8 a. m., or on Sundays or holidays," authorized by Section 5 of the 1911

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sion has appeared in all subsequent appropriation acts covering the salaries of customs employees, and administrative practice has since been for the Bureau of Customs to pay the extra compensation and then collect it from the carrier requesting the service.

[9] The 1936 appropriation act also required that the receipts from the carriers for such compensation be "deposited as a refund to the appropriation from which paid."

Act, as amended, is payable for any services rendered after 5 p. m. or on Sundays or holidays, even though rendered as part of the employee's regularly assigned tour of duty not exceeding 8 hours per day and 44 hours per week. This is not only inconsistent with the plain language of the Act but is opposed to the congressional intention disclosed in the legislative history and to the long-established administrative practice.

A. The word "overtime" should be read in its ordinary sense

Section 5 of the 1911 Act, as amended, authorizes extra compensation "for overtime services" of customs officers and employees who may be required to remain on duty between 5 p. m. and 8 a. m. or on Sundays and holidays. The term "overtime" in its usual and generally accepted sense means "extra working time"; that is, working time in addition to the regular time normally devoted to work.[19] That Congress used the word in its familiar sense appears from the fact that the same section describes employees performing the "overtime services" as those "who may be required *to remain* on duty," thus sug-

[19] "One who works more than the usual number of hours per day is said to work overtime." *Cote* v. *Rachelder-Worcester Co.*, 85 N. H. 441, 447. "Overtime," according to *Webster's New International Dictionary*, is "Time beyond, or in excess of, a set limit; esp., extra working time." And according to the *Oxford Dictionary* the term means "Time during which one works over and above the regular hours; extra time."

gesting that an employee entitled to extra compensation must first have performed his regular services. This construction seems inescapable in the light of the last proviso to Section 5, authorizing the collector of customs "in those ports where customary working hours are other than" from 8 a. m. to 5 p. m. on weekdays, "to regulate the hours of customs employees so as to agree with prevailing working hours in said ports" (for example, with the hours of persons such as longshoremen, whose work is related to the services of customs employees). It is clear that this proviso permitted the collector to provide for separate shifts of employees, in order to accord "with prevailing working hours" at the port, and that those shifts were not to be compensated on an overtime basis if the regular working day was not lengthened. Apart from the proviso, Section 5 already empowered the collector to "require" that customs officers and employees "remain on duty" after 5 p. m. or on Sundays or holidays, charging the carrier extra compensation for the "overtime services" rendered. The last proviso added to Section 5 by the 1920 amendment, which expressly disclaims any intention "to affect or alter the length of a working day for customs employees or the overtime pay herein fixed," can only be construed therefore as an additional and separate power, to require a regular tour of duty at these times without the payment of extra com-

pensation. That this was in fact the intention behind the proviso is clear from its legislative history, which will be discussed more fully herein (pp. 38–42).

The Court of Claims rejected the construction suggested above on the ground that the wording of the statute made it "plain and clear" (R. 49) that respondents were entitled to extra compensation for such part of their regular tour of duty as was performed between 5 p. m. and 8 a. m. or on Sundays or holidays. We believe, to the contrary, that a normal reading of the phrase "overtime services," in its context, leads plainly and clearly to the interpretation which we have urged above. But if there is any doubt from a reading of the statute alone, it is fully dispelled by the legislative history—to which, indeed, resort could be had even if the statutory language far more clearly supported the construction adopted below. *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479; *United States* v. *American Trucking Ass'ns*, 310 U. S. 534, 543–544; *United States* v. *Dickerson*, 310 U. S. 554, 562.[20]

[20] The pertinent legislative materials are so enlightening on the central points at issue in this case that we have set them out rather fully, for this Court's convenience, in Appendix C, pp. 75–159. Notwithstanding this Court's comment in *Reconstruction Finance Corporation* v. *Bankers Trust Co.*, 318 U. S. 163, 168, footnote 10, as to the relevance of testimony taken at committee hearings, we submit that such testimony is of special assistance when, as here, the stat-

B. The legislative history discloses an intention that extra compensation be paid only for hours worked in addition to the regularly required shift

The legislative history of Section 5 of the 1911 Act and of related statutes in the field of overtime compensation for customs employees leaves no room for doubt that the extra compensation provided for by Section 5 was intended to be paid only for services rendered by the employees in addition to their regular shift, and that no such compensation was payable for services performed as part of a regular shift after 5 p. m. or on Sundays or holidays. The legislative materials are equally clear in demonstrating that Congress was not thought, as respondents have contended, concerned with preserving inviolate their night hours and their Sundays and holidays, nor with providing a premium for working a normal tour at such times.

1. *Legislation to and including the 1920 amendment of the Act of February 13, 1911*

The basic Customs Act of March 2, 1799 (c. 22, 1 Stat. 627), provided that "no goods, wares, or

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ute under consideration forms part of a continuous pattern of legislation extending over nearly 150 years, and when that legislation was in large part the product of conflict between opposing private groups whose views were repeatedly permitted expression in hearings before the interested congressional committees. It should be noted that this Court sought assistance from such materials in construing the same statute in *International Ry. Co.* v. *Davidson*, 257 U. S. 506, 512–513.

merchandise, brought in any ship or vessel from any foreign port or place, shall be unladen or delivered * * * but in open day, that is to say, between the rising and setting of the sun, except by special license from the collector" (Sec. 50, 1 Stat. 665). The Act required customs inspectors "to attend to the delivery of the cargo * * * at all times when the unlading or delivery of goods, wares and merchandise is lawful, particularly from the rising till the setting of the sun on each day, Sundays and the Fourth of July in each year excepted; for which purpose they shall constantly attend and remain on board the vessel * * * or at any other stations where their inspection is necessary" (Sec. 53, 1 Stat. 667).

Since under this statute, which remained in effect for over 70 years, the collector of customs could grant special licenses for unlading at other than the regular hours, customs inspectors were on duty and subject to call 24 hours per day, 365 days per year, and their services could be "appropriated" at any time. By 1871 the granting of special licenses to unlade at other than the usual daytime hours had become customary, and resulted in long working hours and considerable injustice to the customs inspectors. With the common practice of unlading at night and on Sundays and holidays, the customs inspectors were often required to remain on duty all day, Sundays

and holidays.[21] Moreover, the steamship companies, desiring to maintain regular schedules, made a practice of arranging privately with inspectors to pay them extra in order to speed the discharge of the vessels; as a consequence, the rates varied and at times were excessive in amount.[22]

An effort to prevent such private negotiations with inspectors and to place overtime compensation on a more uniform level took the form of the Act of March 3, 1873, 17 Stat. 579.[23] Besides providing for the granting of special licenses by the collector to permit steamships arriving from any foreign port to unlade their cargo at night (between sunset and sunrise), the 1873 Act required the collector to charge the "master, owner, or consignee" of the vessel a "uniform and reasonable rate of compensation" for the services of inspectors assigned to superintend the unlading of the cargo and to collect and distribute the same among the inspectors (see Cong. Globe,

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[21] S. Rep. No. 380, 41st Cong., 3d sess., 1871, and testimony annexed thereto, pp. 42, 69, 139, 158; H. Rep. No. 2708, 57th Cong., 1st sess., p. 2; Hearings, S. Committee on Commerce, on S. 1504, S. 1774, and S. 2188, 67th Cong., 1st and 2d sess., pp. 132, 140–141 (Appendix C, pp. 114, 116–117).

[22] S. Rep. No. 380, *supra*, pp. 73, 77, 121, 139, 143; S. Rep. No. 227, 42d Cong., 2d sess., pp. XXVII–XXVIII; see also Hearings, H. Committee on Ways and Means, on H. R. 9525, 61st Cong., 2d sess., pp. 461–462, 468, 472; Hearings, S. Committee on Finance, on H. R. 2667, 71st Cong., 1st sess., Vol. 17, p. 485 (Appendix C, pp. 75–76, 122).

[23] See Hearings, S. Committee on Finance, on H. R. 2667, 71st Cong., 1st sess., Vol. 17, p. 485 (Appendix C, p. 122).

42d Cong., 3d sess., pp. 2009, 2205). The 1873 Act related only to steamships arriving from foreign ports but was later extended to sailing vessels (Sec. 25 of Act of June 26, 1884, 23 Stat. 53, 59); to other conveyances and to the lading as well as the unlading of cargo (Act of June 30, 1906, 34 Stat. 633); and then to customs officers other than inspectors (Sec. 5, Act of February 13, 1911, 36 Stat. 901). The 1911 Act, which replaced the prior legislation, entrusted to the Secretary of the Treasury rather than the collector the fixing of the "reasonable rate of extra compensation for night services" to be charged to the carriers and paid to the employees, and provided that the rate should not exceed "double the rate of compensation allowed * * * for like services rendered by day" (Sec. 5).

During this entire period, the regular working day for customs inspectors, fixed by statute as between sunrise and sunset, was administratively set at 7 a. m. to 6 p. m., in effect a 10-hour day.[24] For this working day, inspectors were paid a stipulated per diem rate.[25] However, this was re-

[24] Hearings, Subcommittee of H. Committee on Ways and Means, on H. R. 6577, 66th Cong., 1st sess., pp. 5–6, 10–12; Hearings, H. Committee on Ways and Means, on H. R. 6738, 75th Cong., 1st sess., p. 186; see Appendix C, pp. 82–83, 140–141.

[25] The pay originally fixed at $2 per diem (Act of March 2, 1799, 1 Stat. 704, 706) was gradually increased to a maximum of $6 in 1909 and $7.80 in 1923 (Act of April 26, 1816, 3 Stat. 306; Rev. Stat. § 2733; Act of April 29, 1864, 13 Stat.

duced to 8 hours in 1920, when Section 5 of the 1911 Act was amended by the Act of February 7, 1920 (41 Stat. 402), in the form in which it is now law (19 U. S. C. 267).

The principal change made by the 1920 amendment was to provide that the extra compensation theretofore payable for night services should be payable instead for "overtime services of * * * customs officers and employees who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays."[26]

2. *The Shift or "Platoon" System*

From an early date, traffic conditions at the international borders were such that customs inspectors were required to work at unusual hours,

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61: Act of March 4, 1909, 35 Stat. 1065, Sec. 2; Act of March 4, 1923, 42 Stat. 1453). By the Act of May 29, 1928, 45 Stat. 955 (19 U. S. C. 6 (a)), customs inspectors were given fixed salaries and paid on annual basis. Compensation of respondents is $2,100 per annum, which may be increased by promotion to a maximum of $3,300. Even prior to 1928, when compensation was changed to an annual basis, customs inspectors, regularly employed and paid on a per diem basis, were paid for 365 days (see Hearings, Committee on Ways and Means, on H. R. 6577, 66th Cong., 1st sess., p. 8, Appendix C, p. 84), thus receiving the equivalent of an annual salary.

[26] Other provisions of the 1920 Act provided extra compensation for overtime services rendered in the unlading, receiving, and examination of passengers' baggage and for inspectors' waiting time during overtime periods, and slightly increased the overtime rate for services rendered after 5 p. m.

and where continuous 24-hour customs inspection service was required, the inspectors worked in separate shifts or "platoons."[27] This has been the situation at the port of Detroit since 1885,[28] and the administrative practice there has been to employ three 8-hour shifts of customs employees (R. 40–41).

During consideration of the bill which became the 1911 Act, and on many occasions thereafter

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[27] In 1885 the Report of the Secretary of the Treasury on the Collection of Duties disclosed overtime and night work on the part of customs inspectors at the borders (pp. 138, 156, 166, 188, 220, 256–257, 260). At Suspension Bridge, New York, and at Detroit the shift or platoon system was in effect in 1885 (Report of Secretary of Treasury, *supra*, pp. 260, 170). At least since 1900, continuous 24-hour inspection service has been maintained at toll bridges over the Niagara River, the inspectors working on shifts. See *International Ry. Co.* v. *Davidson*, 257 U. S. 506, 508.

[28] A letter of April 10, 1885, from the Collector of Customs at Detroit, Michigan, to the Secretary of the Treasury (set out in part in Appendix D, pp. 160–162), discloses the situation which obtained at Detroit as of that date. Ferries between Detroit and Windsor and Walkerville operated from sunrise until 10 p. m. or midnight. At the Michigan Central and Grand Trunk Railway freight depots, inspectors worked from 7 a. m. until dark and "very often through the entire night, so that there may be no delay to the railroad traffic." At the railway docks of the Michigan Central and the Grand Trunk Railroads, inspection was conducted on a 24-hour basis, the customs officers being divided into three reliefs working 8 hours each. The boats of these railroads "run *nights*, *days*, and *Sundays*, with *no* cessation whatever, the year through, and *all cars* in transit between east and west arriving at and departing from this port by the Michigan Central, Grand Trunk, and Wabash Railroads are *crossed on these boats*" (Appendix D, pp. 161–162).

in connection with amendatory legislation, Congress and its committees were fully apprised of the "shift" or "platoon system", whereby separate groups of inspectors were assigned to a regular tour of duty at times other than 8 a. m. to 5 p. m. on weekdays. The Government's authority to establish such a system was never questioned, and it was made plain that the extra compensation provided for by the 1911 Act and its successors was not to be payable for services performed on any regular shift, even though occurring at night or on Sundays or holidays; it was only for *extra* services performed in addition to the regular shift, which would be uncompensated by the Government, that the 1911 Act was intended to provide.

Thus, Congressman Moore, the sponsor of the bill which became the 1911 Act, said at the hearings before the House Committee on Ways and Means (Hearings on H. R. 9525, 61st Cong., 2d sess., p. 463):

> The provisions of this bill contemplate the entry of a bond that will enable the owner or agent of a vessel to provide through the collector of the port, at the instance and by the direction of the Secretary of the Treasury, a fund from which these employees of the Government may be paid. They ought to be paid for their extra time. They serve the Government and receive compensation for the service they render, but they are not altogether

serving the Government when they do this work in the night hours; they are serving very largely the owner or the agent of the vessel, who is perfectly willing to pay for the services. Now, it does seem to be a very unfair proposition that the law should specially favor the inspectors of customs with regard to this night work, and should expressly forbid payment to the assistant weighers, storekeepers, watchmen, and others who are necessarily employed upon the work.

(At p. 470):

Mr. FORDNEY. The compensation for night work would be more than twice the compensation for day work?

Mr. MOORE. I think not, but *so long as a man works in the daytime and then continues his work through the night,* if the expense does not come out of the Government he should be paid double. [Emphasis supplied.]

Other congressmen agreed (p. 471):

Mr. BENNET. This bill was called to my attention by a gentleman importing gypsum from Nova Scotia and landing it at Staten Island, which is within the port of New York. That is quite a distance from the island of Manhattan, where the weighers and other officers live, and they find it practically impossible to get the necessary customs officers to go down there. The collector does not feel like ordering them there

> to work all night without any extra compensation *after working all day.* The season for gypsum importation is very short, and they find their business is being very seriously interfered with. * * * [Emphasis supplied.]

When the 1920 amendment was under consideration, changing the standard for extra compensation to "overtime services" performed between 5 p. m. and 8 a. m., or on Sundays or holidays, it was also recognized that payment would be for actual overtime. The representative of the customs inspectors associations, Mr. William H. Bond, testified at the hearing on the proposed 1920 amendment (Hearings, Subcommittee of House Ways and Means Committee, on H. R. 6577, 66th Cong., 1st sess., p. 6):

> Mr. TREADWAY. The idea is, you are first endeavoring to change the present provision from 11 hours to 9, or endeavoring to provide eight hours of work, to follow an eight-hour day, and *that you should get extra compensation for overtime?*
>
> Mr. BOND. Yes * * *. [Emphasis supplied.]

The Assistant Secretary of the Treasury recommended enactment of the legislation in order to compensate inspectors who work overtime inspecting baggage (services not covered until the 1920 Act was passed), and made it plain, in a letter to the chairman of the committee, that the eight-

hour shift system would not entail any extra compensation (Hearings, *supra,* pp. 10–12):

> The department has under consideration a plan whereby boarding officers and inspectors of customs will be assigned to duty in eight-hour shifts and will not, therefore, be called upon to work overtime and no extra compensation paid to officers assigned to the night shift. In order to carry out such plan it will be necessary to secure additional appropriations, and pending the adoption of the plan it will, of course, be necessary to detail inspectors and other employees for night work.
>
> I am of the opinion that when overtime work is required extra compensation should be paid as outlined in the bill now under consideration. I therefore recommend the enactment of this bill into law.

In the congressional debates, the same point was made (59 Cong. Rec. 2171):[29]

> Mr. TREADWAY. * * * The present law provides for a 10-hour day, and here we fix it at 8 hours, with a provision for overtime beyond that.

The "platoon" system was implicitly recognized and approved in the last proviso added by the 1920 amendment to Section 5 of the 1911 Act, vesting the collector of customs, "in those ports where

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[29] See also Hearings on H. R. 9525, pp. 461–463; Hearings on H. R. 6577, pp. 10, 12–13; 59 Cong. Rec. 640, 2171–72, 2176–77. Appendix C, pp. 75–76, 84–85, 87, 90–93, 94–96.

customary working hours are other than" 8 a. m. to 5 p. m. on weekdays, "with authority to regulate the hours of customs employees so as to agree with the prevailing working hours in said ports." This proviso, it was explicitly directed, was not to be construed "to affect or alter the length of a working day for customs employees or the overtime pay herein fixed" (see Appendix A, p. 68). The objective of the proviso was to enable the collectors, where necessary, to fix a working day at hours other than 8 a. m. to 5 p. m. on weekdays without making extra compensation payable therefor. Mr. William H. Bond, President of the National Association of Customs Inspectors, so testified at hearings before the Senate Commerce Committee on S. 1504, a bill to extend to immigration inspectors the overtime compensation provided by the 1911 Act as amended (Hearings on S. 1504, S. 1774 and S. 2188, 67th Cong., 1st and 2d sess. p. 130):

> Mr. BOND. I want to say a word in relation to the distinction Senator Calder mentioned during the hearing as between seaport and frontier work. Of course, I am familiar with the purpose of the legislation which is now the law, because I wrote the bill which was originally introduced, and I changed the bill to meet the desires of the subcommittee of the Committee on Commerce * * *. To meet the condition at New Orleans, where the hours of

labor are from 7 o'clock a. m. to 4 o'clock p. m., this proviso at the end of the bill was put in allowing collectors to adjust the inspectors' hours to the customary working hours at ports where the practices are different. This proviso also applies to the Canadian border at places where traffic is continuous during the 24 hours, such being the "customary working hours"—and the inspectors work in 8-hour shifts without overtime. The same proviso is in the immigration bill, S. 1504, you will note, as in our law.

Senator RANSDELL. Which bill?

Mr. BOND. The existing law, Senator; the act of February 7, 1920. It is just the same as it is in Senate bill 1504. At the end of the bill it states that the collector is at liberty to arrange the hours of inspectors, not more than eight hours a day, to correspond with the customary working hours; and the department rightfully construed that, although it had special reference to New Orleans, it also applied to border ports, where the customary working hours are from 8 o'clock one morning until 8 o'clock the next morning; where traffic is moving across these magnificent structures at Niagara Falls and through these other places, back and forth, all the time. Consequently, at such places we don't work any more than eight hours. The inspectors along the border are satisfied with that. That is the practice everywhere along the border, wherever it can be done, to make

> no charge for overtime service during the weekdays—only for Sundays and holidays. * * * [p. 132] Mr. Stanley has made the statement time after time that these men's work is not overtime until they have completed their regular day's work. We will concede what he has said, but to any man that works six days in the week the seventh day is overtime, according to the gospel or anything else, and he ought to have pay for it when he is working for somebody else's accommodation.[20]

The Association, in a brief filed with the committee, brought out that this proviso permits three shifts without overtime compensation (Hearings, p. 145):

> [Under the last proviso of the 1920 amendment], the Treasury Department has ruled that where railroad, ferry, or bridge traffic is continuous throughout the 24

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[20] The court below was thus in error in holding that the proviso was intended to cover only an exceptional condition at certain ports where the customary working hours of longshoremen were from 7 a. m. to 4 p. m., and analogous situations. The quotation taken from the testimony of Mr. Bond, who drafted the 1920 amendment, shows that although the proviso was placed in the Act at the special insistence of Louisiana congressmen, who called attention to the prevailing working hours of longshoremen at the port of New Orleans, others pointed out that prevailing hours of work might vary from port to port, and the proviso was consequently drafted in language sufficiently broad to authorize even three 8-hour shifts in 24 hours. See Hearings, S. Committee on Finance on H. R. 2667, 71st Cong., 1st sess., p. 494; Appendix C, p. 123.

> hours, those are the "customary working hours," and has placed inspectors on duty in 8-hour shifts, and no charge is made against transportation companies for overtime compensation on week days; the only charge being for Sundays and holidays, days which are universally recognized in all industries to be overtime. * * *

Likewise, in urging a similar bill for immigration inspectors in a later Congress (1929), Mr. George E. Tolman, the representative of the Immigration Inspectors Association, testified (Hearings before Senate Immigration Committee on S. 1126 and H. R. 3309, 71st Cong., 3d sess., p. 22):

> Mr. TOLMAN. There is no desire on the part of immigration officers to be paid overtime for the particular hours in the 24 in which they work—that is, as regards other hours in the 24. That situation is taken care of in these words in the bill [then citing a proviso patterned almost verbatim after the last proviso in the 1920 amendment].

The intended scope of the phrase "overtime services" was made doubly clear at the hearings and debates on bills introduced after 1920, affecting the 1911 Act as amended;[31] and Mr. Bond, who

[31] Principally the Tariff Act of 1922, which extended the provisions for extra compensation to overtime services performed for ferries and railroads at international boundaries; the Tariff Act of 1930, which further extended it to cover all vehicles used as a means of land transportation; and the Customs Administration Act of 1938, which extended it to

drafted the 1920 amendment and who spoke for the largest organization of customs inspectors,[32] asserted without contradiction that overtime compensation was not payable for a regular shift performed in whole or part after 5 p. m., nor for Sunday or holiday work unless it was part of a seven-day workweek. Thus, at hearings before the Senate Committee on Commerce in 1921, on a bill (S. 2188) to exempt railroads, bridges and ferries from the payment of overtime, Mr. Bond testified (Hearings on S. 1504, S. 1774 and S. 2188, 67th Cong., 1st and 2d sess., pp. 29–30):

> Senator NELSON. Let me ask you a question. Is not the man that does night duty immune from day duty?
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> Mr. BOND. Not at all. I am at work at my dock from 8 o'clock in the morning until 5 o'clock in the evening. Then I may con-

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overtime services of customs employees for persons not theretofore covered.

[32] For over a decade commencing in 1919, William H. Bond, a customs inspector of Boston and president of the National Association of Customs Inspectors, was always the principal and at times the only spokesman for the customs inspectors. At the hearings on the Tariff Act of 1930, he was joined by Stuart K. Brandon on behalf of the National Customs Service Association, an organization comprising all branches of the customs service. The statements made by these men to committees of Congress as to the situations which obtained and the manner in which the overtime pay acts were being administered were given great weight, and Mr. Bond was uniformly successful in obtaining the passage of the legislation which he advocated and preventing the enactment of that which he opposed.

tinue on my own ship or perhaps it may be necessary to change to another ship, and I may work all night, as many times I have done, and then report back to my dock and continue working there.

Senator NELSON. But what about the next day?

Mr. BOND. The next day I continue at my work just exactly the same.

Senator FERNALD. Is there but one crew?

Mr. BOND. Just one crew. There are some places on the border where it is practicable to have three 8-hour shifts for railroad work, but there is no other place where that is practicable. * * *

That deals with a place where train service is not continuous at night. At other places, like Buffalo, where trains are in operation at all hours of the 24, the Government maintains three 8-hour shifts of inspectors, and no bills are rendered against the railroad companies except for Sundays and holidays. * * *

As I have already said, at points where railroad train passage is constant during the 24 hours we maintain a 24-hour service in three 8-hour shifts, and no bills are rendered for weekday service against the transportation companies. At these points in Minnesota, according to what you say, Senator, the only overtime is for about two hours in the evening.

Senator NELSON. Let me ask you, where they have three crews, do they get extra time for night work?

Mr. BOND. No, sir; the only bills they render in such case are for the seventh day.

Senator NELSON. And for Sundays, too?

Mr. BOND. For Sundays; yes. That is what I mean when I say that. They render a bill against the railroad company for the seventh day.

Senator NELSON. For double pay?

Mr. BOND. Yes. In some of those places it is not necessary to have three 8-hour shifts, because, as you say, the train arrives early in the evening, and then there is no more business, and it would be foolish for the Government to expend money to maintain three shifts.

Across the river from the port of Buffalo there is a Canadian port, and railroads cross from Canada into this country and from this country into Canada at that point. Our men are retained there in three 8-hour shifts and they have no overtime on weekdays, but they do render bills for Sundays and holidays, for which any man would be entitled to extra compensation.

In urging that the overtime act be extended to inspectors handling freight, the collector at Buffalo wrote (Hearings, *supra*, p. 61):

I believe it more desirable that every employee should have one day's rest in seven, but as long as the men are required to work seven days a week I believe that they are entitled to the overtime pay for

> Sunday and holiday work, and that the act should be made broad enough to include all customs employees who are required to work on Sundays and holidays.'

The carriers attempting to have the law amended to shift to the Government the burden of paying for overtime services rendered to railroads, bridges and ferries,[33] recognized that no overtime was payable where 24-hour customs services were rendered in three shifts, nor where Sunday or holiday work was performed as part of a six-day week consisting of 8-hour shifts, as was the case in Detroit (Hearings, *supra*, pp. 87–89, 95–100, 102, 110–111, 119). The representatives of the customs inspectors agreed (Hearings, pp. 132, 134, 136, 140, 145, 150).

This was again made plain to Congress at the hearings before the Senate Finance Committee on H. R. 2667, 71st Cong., 1st sess., which became the Tariff Act of 1930. Under Section 451 of the Tariff Act of 1922, which was reenacted in substantially the same form in the 1930 Tariff Act, Mr. Bond pointed out that no weekday overtime is paid at Detroit where "the men work in 8-hour shifts," but only "for overtime services which

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[33] This was prior to the decision of this Court that the 1911 Act as amended was inapplicable to bridges (*International Ry. Co.* v. *Davidson*, 257 U. S. 506) and prior to the decision of the Court of Appeals that the Act was likewise inapplicable to railroads (*Mellon* v. *Minneapolis Ry.*, 285 Fed. 980 (App. D. C.)).

they render beyond eight hours a day" (Hearings, pp. 481–482, 487) or for working "seven days a week" (*id.* p. 494; see also *id.* pp. 495–497, 499–500). The Secretary of the Treasury agreed that 24-hour customs service "including such service on Sundays and holidays" would relieve the carriers of any overtime payments (*id.* p. 509). A carrier's representative conceded that such continuous service required merely that the Government have funds available to pay three shifts of employees, and needed no amendment of the customs overtime law (*id.* pp. 518–519).[34]

Approval by Congress of this construction is demonstrated by its action in passing the Tariff Act of 1922 with provisions (Section 450 and 451) extending the overtime provisions of Section 5 of the 1911 Act to railroads and other vehicles, after being explicitly informed of the meaning attached to Section 5 of the 1911 Act and without any amendment of its phrasing, and by its later action in reenacting Sections 450 and 451 of the Tariff Act of 1922 without substantial change as part of the Tariff Act of 1930.[35] Reading the

[34] See also Hearings, S. Committee on Immigration, 71st Cong., 3d sess., on S. 1126 and H. R. 3309 (to enact for immigration inspectors an overtime law such as Section 5 of the 1911 Act as amended) pp. 22, 31.

[35] *Biddle* v. *Commissioner of Internal Revenue*, 302 U. S. 573; *United States* v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77; *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488, *Iselin* v. *United States*, 270 U. S. 245.

1911 Act as amended in the light of the objective to be achieved and the evil to be remedied (cf. *International Ry. Co.* v. *Davidson*, 257 U. S. 506, 512), and with the additional illumination furnished by the legislative materials pertinent to this statute and to those *in pari materia* with it, there is little room for dispute that the intended basis for extra compensation was actual "overtime services" performed by employees who had already completed their regularly assigned shift, and not services performed during a regular 8-hour shift embracing hours after 5 p. m. or work on Sundays or holidays. Of particular significance is the fact that this construction of the 1911 Act as amended was voiced not only by Government officials, congressmen and representatives of the carriers, but also by the representatives and authorized spokesmen for the customs employees themselves; and that against the background of the long-established system of "platoons" at the border ports, which under this interpretation would preclude overtime compensation, the customs employees and their associations never sought to have the statute amended to provide for extra compensation in the situations in which recovery was allowed below.[36]

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[36] Hearings, H. Committee on Ways and Means, on H. R. 9525, 61st Cong., 2d sess., p. 470; Hearings, H. Committee on Ways and Means, on H. R. 6577, 66th Cong., 1st sess., pp. 11, 18; Hearings, S. Committee on Commerce, on S. 1504, S. 1774, and S. 2188, 67th Cong., 1st and 2d sess., pp. 26, 30–32, 46–47.

C. The administrative practice

The administrative practice under the customs overtime legislation from its earliest form down through the law as it existed during the period in suit, has been entirely consistent with the construction of the overtime law adopted at the hearings and debates in Congress. A letter from the Bureau of Customs, dated June 4, 1943 (Appendix D, pp. 163–164),[37] states that it has been the consistent practice of the Bureau throughout the country to charge carriers extra compensation for services of customs employees, and to pay the same to the employees, only in instances when actual overtime services were performed by them "in addition to the 44 or 48 hours per week required of officers or employees for earning their regular pay"; and that such extra compensation has never been collected or paid for services rendered by customs inspectors or other employees during their regular shifts, irrespective of whether

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61–64, 87–89, 94–100, 102, 110–111, 119, 132, 136, 137, 150; Hearings, S. Committee on Finance, on H. R. 2667, 71st Cong., 1st sess., Vol. 17, pp. 481, 487, 494–496, 497, 509, 518–519; Hearings, S. Committee on Immigration, on S. 1126 and H. R. 3309, 71st Cong., 3d sess., pp. 22, 31, 33; Hearings, H. Committee on Ways and Means, on H. R. 6738, 75th Cong., 1st sess., pp. 87, 89, 93, 133, 183, 186, 188–189; Hearings, S. Committee on Finance, on H. R. 8099, 75th Cong., 3d sess., pp. 21–22. (See Appendix C, pp. 75 *et seq., passim.*)

[37] As to the propriety of this method of establishing administrative practice, see *United States* v. *Minnesota*, 305 U. S. 382, 390.

the work was performed at night or on Sundays or holidays.

This long-established practice was made known to Congress on numerous occasions, at the hearings and debates on proposed legislation to restrict or extend the 1911 Act as amended in 1920, such as the bills which became the Tariff Act of 1922. The practice of the Customs Bureau, as set forth in its letter of June 4, 1943, was brought out not only by Treasury Department officials but also by spokesmen for the employees themselves. Indeed, representatives of certain carriers who were hostile to the payment of overtime compensation to customs employees attempted to restrict or abolish the overtime law and to that end made every effort to discredit the 1911 Act and the overtime services rendered by inspectors; but such carriers never once contended that extra compensation was demanded from the carrier or paid to the employee for services performed on a regular shift and without actual overtime.[38] Any such practice, if it had existed, would not have been ignored as a weapon against the overtime law.

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[38] Hearings, S. Committee on Commerce, on S. 1504, S. 1774, and S. 2188, 67th Cong., 1st and 2d sess., pp. 87–150, *passim* (Appendix C, pp. 106–120); Hearings, S. Committee on Finance, on H. R. 2667, 71st Cong., 1st sess., pp. 481–482, 487, 494, 500, 509, 518–519; Hearings, S. Committee on Immigration, on S. 1126 and H. R. 3309, 71st Cong., 3d sess., pp. 22, 28, 31; Appendix C, pp. 120–123, 124–125, 126–129, 129–131.

Apparently the first suggestion that extra compensation could be collected and paid for services within the regular tour of duty came from the group of customs inspectors in Detroit, whose position is exemplified by the claims in suit; but it is clear that their complaint was directed against the long-established administrative practice and not against any recent departure therefrom.[39]

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[39] The court below found that during the six-year period in suit (1931–1937) extra compensation was paid at some stations in Detroit for services on Sundays and holidays (R. 42). Any inference that such payment was made for services rendered on Sundays and holidays as part of a regular shift is foreclosed by the findings below that excess pay "for daytime service performed on Sundays and holidays" was paid in connection with "an 8-hour day and a 56-hour week," no excess pay being given "for nighttime service"; and that where services were performed within a 48-hour week, which included daytime or nighttime services on Sundays or holidays, or nighttime services on weekdays, "no excess pay was given" (Finding 6, R. 42). This makes it plain that extra compensation was paid only for services rendered in addition to a regular tour of duty of 8 hours per day and 48 hours per week. The Treasury Department clearly regarded Sunday and holiday service as no different from night service in respect of the payment of extra compensation; in either event, extra compensation was paid for actual overtime only. See letter of June 4, 1943, from Bureau of Customs, Appendix D, pp. 163–164. See also Hearings, Subcommittee of S. Committee on Finance, on H. R. 8099, 75th Cong., 3d sess., p. 64, at which a Treasury Department representative testified that the platoon system at the port of Detroit, at least since 1929, consisted of a regular tour of duty for each employee of not more than 8 hours per day and 6 days per week, Sunday and night work being "rotated among the men." Extra compensation for Sunday and holiday

These contentions were brought to the attention of Congress in 1937 at the hearings on the bill which became the Customs Administration Act of 1938, but they were in effect rejected by the customs employees' associations, the carriers, and by Congress itself. There was then under consideration by the congressional committees Section 8 of the Customs Administration Bill (H. R. 6738 and H. R. 8099, 75th Cong.), which would extend Section 451 of the Tariff Act of 1930 to provide overtime compensation in all cases where customs employees performed extra services outside regular hours of business at the request of vessels, vehicles or common carriers, such compensation to be at the expense of the latter. Hearings, House Committee on Ways and Means on H. R. 6738, 75th Cong., 1st sess., pp. 18–19, 35 (Appendix C, pp. 132–142). During the hearings, it was brought out that overtime compensation is not paid at ports of entry where the Bureau of Customs maintains "regular shifts on duty on nights, Sundays, and holidays" (Hearings, pp. 87, 89, 93) but only for "overtime work" where there are no separate shifts (*Id.* p. 92, 133). Representatives of the Treasury Department and of the customs employees agreed that the proposed broadening of the overtime law was not intended to alter, and should not alter, the practice of not paying

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work was paid only "to customs inspectors who had already served on their regular tours of duty." (*Id., ibid.*)

"overtime compensation * * * when there is a regular shift on duty" (*Id.* p. 133). The proposed amendments to Section 451 of the Tariff Act of 1930 were characterized by a representative of the National Customs Service Association as a clarification of "existing law so as definitely to present a statutory basis for the present administrative practice of not requiring payment of overtime compensation to customs officers at border ports, who are working in shifts, and who therefore work a full week, but at other than regular hours, and who do not at present participate in overtime compensation" (*Id.* pp. 180–181).

The association of customs employees believed that such employees should not have Sunday or holiday work made a part of their regular weekly tour of duty, and their representatives accordingly proposed an amendment to prohibit the assignment of customs employees "to regular duty on Sundays or holidays either by day or at night, in compliance" with the request of carriers (*Id.* pp. 181–183, 185). Objections were raised that this amendment would impair "the authority of the Treasury Department to assign officers on regular tours of duty on Sundays or holidays. In order to make certain that such authority * * * was to remain unimpaired," the proposed amendment was rejected in favor of a proviso that—

> Nothing in [section 8] shall be construed to impair the existing authority of the

> Treasury Department to assign customs officers or employees to regular tours of duty at nights or on Sundays or holidays when such assignments are in the public interest. (Hearings before Subcommittee of Senate Committee on Finance, on H. R. 8099, 75th Cong., 3d sess., p. 61).[40]

The customs employees association finally accepted this provision (*Id.* p. 61). During the debates on the floor of the House, it was pointed out that this proviso was intended "to preserve the existing authority of the Treasury Department to make such assignments" of customs officers and employees "to regular tours of duty at night or on Sundays or holidays" and thus preclude the collection of additional compensation. 81 Cong. Rec. 9391–9392.

At the hearings before a Subcommittee of the Senate Committee on Finance on the bill which had passed the House, attention was directed to the contention of an organization of customs employees at Detroit that inspectors were entitled to overtime for all services rendered between 5 p. m. and 8 a. m., and on Sundays or holidays, even though "performed during regular 8-hour tours of duty" (Hearings on H. R. 8099, 75th Cong., 3d sess., p. 64). The representative of the association of customs employees did not support this view, but supported the proviso as it had passed

[40] These were the continued hearings on the Customs Administration Act of 1938, this time on the successor bill to H. R. 6738.

the House, describing it as "crystallizing the present situation as to overtime compensation at border points, and leaving the Department full discretion to deal with those matters as the public interest may require" (Hearings, p. 61). The provision became law. 52 Stat. 1082, 19 U. S. C. 1451.

The 1938 amendment to the overtime law thus possesses significance virtually dispositive of the question here presented. The background of this amendment, was the long-established administrative practice clearly brought to the attention of Congress: that at border ports where continuous custom inspection was required, shifts or platoons were maintained consisting of regular tours of duty of eight hours daily and six days weekly; and that no overtime compensation was paid for any part of such tour of duty rendered at night or on Sundays of holidays. The 1938 amendment, confirming the authority in the Treasury Department to set up such platoon systems where the public need required—and to include Sunday and holiday work in the regular shift—by the same token constitutes approval of the administrative construction placed by the Treasury Department [a] upon the 1911 Act as amended. See

[a] The 1938 Customs Regulations also removed the doubt engendered by the claims in suit, by providing that no extra compensation was authorized for a regular tour of duty performed at night or on Sundays or holidays (Art. 1242 (g); Appendix B; *infra*, p. 74).

Inland Waterways Corp. v. *Young*, 309 U. S. 517, 525, and cases cited n. 35, *supra*.

The conclusion below, that any work done as part of a regular shift after 5 p. m. or on Sundays or holidays, constitutes "overtime services" compensable under Section 5 of the 1911 Act as amended, is in our view rendered quite indefensible by the legislative history and the administrative practice under that Act.[42]

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[42] The court below (R. 50) relied upon *Ferguson* v. *Port Huron & Sarnia Ferry Co.*, 13 F. (2d) 489 (E. D. Mich.), in which the district court stated that overtime as used in the statute "was intended to express the meaning: 'beyond the regular, fixed working hours.'" But that language, when read in the light of the problem before the district court, is far from support for the conclusion below. That case involved a suit brought by the collector of customs for the use and benefit of certain customs employees to recover overtime compensation for Sunday and holiday services, and the defense was based primarily upon the contention that an inspector was not entitled to overtime pay on Sundays and holidays unless he had "first earned his regular pay for such day by working during the regular hours on that day." (13 F. (2d) at 492). It was to that argument that the court addressed its observations. The inspectors in question worked in 8-hour shifts, but there was no question of extra compensation for regular tours of duty at unusual hours, for the consistent practice was to charge carriers only for actual overtime. (Hearings, S. Committee on Commerce on S. 1504, 67th Cong., 1st and 2d sess., p. 100; Hearings, S. Committee on Finance on H. R. 2667, 71st Cong., 1st sess., p. 482; Appendix C, pp. 110–111, 120–121). There is nothing in the facts of that case contrary to the construction for which the Government here contends.

Likewise, the dictum by this Court in *International Ry. Co.* v. *Davidson*, 257 U. S. 506, 510–511, that "this substituted

III

Section 5 of the 1911 Act as amended does not apply to services rendered at a bridge or tunnel

Our argument up to this point, if correct, would require reversal of the entire judgment below. If we are mistaken in our position that "overtime services," to be compensable at the extra rate, must be rendered in addition to a regular tour of duty, we submit that respondents were not entitled to recover extra compensation for services performed at unusual hours at the bridge and the tunnel.

The 1911 Act as amended in 1920 applied solely to customs services connected with "any vessel or other conveyance," and the "extra compensa-

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section [Sec. 5] defines what shall be deemed overtime," must be read in its context as denoting the periods within which actual overtime was compensable rather than the periods in which any service of itself constitutes overtime. *Mellon* v. *Minneapolis Ry.*, 11 F. (2d) 332 (App. D. C.), certiorari denied, 271 U. S. 678, on which respondents relied below, merely involved the question of whether the Tariff Act of 1922 had made Section 5 of the 1911 Act as amended applicable to the unlading of the baggage of passengers arriving by train (the same court having held prior to the 1922 Act that such unlading was not covered by Section 5, *Mellon* v. *Minneapolis Ry.*, 285 Fed. 980). The court of appeals concluded that the 1922 Act had so changed the law and that overtime compensation could be collected from the railroads if they undertook to unlade passengers and baggage at unusual hours. 11 F. (2d) at 334–335. The court was not called upon nor did it undertake to pass upon whether customs employees working on regular 8-hour shifts not exceeding 48 hours a week were entitled to compensation.

tion" for overtime services was to be paid by the "master, owner, agent, or consignee of such vessel or other conveyance." This Act was held to be inapplicable to an international toll bridge, because "the words 'vessel or other conveyance' are not appropriate to describe the plant of a toll-bridge." *International Ry. Co.* v. *Davidson*, 257 U. S. 506, 512. It was likewise held inapplicable to the unlading of passengers' baggage from railroads. *Mellon* v. *Minneapolis Ry.*, 285 Fed. 980 (App. D. C.). However, the Tariff Act of 1922 repealed Sections 1–4 of the 1911 Act, which required a special license and bond in order to lade or unlade, and substituted similar requirements applicable to any "carrying vessel or vehicle," defined to mean every description of watercraft, carriage "or other contrivance used, or capable of being used, as a means of transportation" in water or on land, exclusive of aircraft (Secs. 401, 450, 451; 42 Stat. 858, 948, 954).[*] This concomitantly broadened Section 5 of the 1911 Act as amended and made it applicable to railroads. *Mellon* v. *Minneapolis Ry.*, 11 F. (2d) 332 (App. D. C.), certiorari denied 271 U. S. 678.

There is, however, nothing in the Tariff Act of 1922 nor any subsequent legislation which made Section 5 of the 1911 Act applicable to a bridge

[*] These provisions were reenacted in the Tariff Act of 1930 (Secs. 401, 450, and 451; 19 U. S. C. 1401, 1450, 1451), in effect during the period in suit.

or tunnel. The terms "vehicle" and "a contrivance used as a means of transportation" may be sufficiently descriptive of a railroad; they are hardly apt to describe a bridge, especially after the decision of this Court expressly holding a bridge not to be a "conveyance" under the 1911 or 1920 Act. Nor can merchandise, baggage and passengers passing over or through a bridge or tunnel be said to be "unladen" therefrom (see Tariff Act of 1930, Sec. 450). Indeed, to hold a bridge or tunnel to be a "carrying vehicle" under the statute would create the problem of whether the bridge and tunnel, or the actual "vehicle" moving over it, are required to give bond, obtain the license, and pay the extra compensation for overtime customs services relating to the lading or unlading of baggage or cargo carried by the moving vehicle. These difficulties suggest the absence of any intention to cover bridges or tunnels in the 1911 Act or the Tariff Act of 1922. Since the decision of this Court in *International Ry. Co.* v. *Davidson*, 257 U. S. 506, holding the 1911 Act as amended inapplicable to a toll bridge,[*] no attempt, so far as we are aware, has been

[*] This Court observed in that case (p. 515) that "to impose upon the company the obligation of furnishing an indemnity bond covering losses which may accrue to the Government from the action, not of the bridge company or of its employees, but of any passenger who crosses the bridge was clearly unreasonable."

made to require a bridge to obtain a special license to unlade and to give bond, nor has any such request ever been made of an international tunnel.[45]

At hearings and debates in Congress in 1937, there was apparent unanimity of opinion that the then existing customs overtime law did not apply to a bridge or tunnel. There was under consideration a provision in H. R. 6738 (the predecessor of H. R. 8099 which became the Customs Administration Act of 1938, 52 Stat. 1077), amending Section 451 of the Tariff Act of 1930. The proposed amendment (Section 8 of the bill) would *inter alia* extend the overtime provisions to overtime services performed at the request of "a common carrier or the owner or consignee of any merchandise," as well as at the request of the owner or master of a vessel or vehicle. Hearings, House Committee on Ways and Means on H. R. 6738, 75th Cong. 1st sess., pp. 18–19. In discussing this amendment, a representative of the National Customs Service Association stated, with-

[45] The court below found that the six carriers which were railroads and ferries had obtained special licenses and filed bonds covering extra compensation for overtime services, and it was from these six that extra compensation had been collected by the collector and turned over to respondents for services rendered in excess of their 44-hour week. No such special license, however, was requested or obtained by either of the other two carriers—the bridge and the vehicular tunnel—to unlade at night or on Sundays and holidays, and neither had posted a bond to reimburse the United States.

out any expression of disagreement from anyone on the committee, that the overtime law then did not apply to bridges and tunnels (*Id.* pp. 188–189). At the debates in the House on the bill as it was reported out of committee, it was observed that the proposed Section 8, broadening the category of persons required to pay overtime compensation would make the law applicable to international bridges; an amendment was proposed to obviate that result (81 Cong. Rec. 9391–9392). And at the hearings on the successor bill, (H. R. 8099) before a Subcommittee of the Senate Finance Committee (75th Cong., 3d sess.), it was again noted that existing law did not authorize charging "the bridge companies for overtime services on international bridges" (Hearings, pp. 21–22), and both the representative of the customs employees and the representative of the Treasury Department agreed (Hearings, pp. 63–64).

In this context, the enactment of the 1938 amendment to Section 451 of the Tariff Act of 1930 (19 U. S. C. 1451), coupled with the consistent administrative practice, supports the view of the dissenting judge below that the 1911 Act, as amended, in the form in which it was in effect during the period here in question, was not intended to apply to overtime services of customs employees at a bridge or tunnel.

Other considerations argue strongly against the construction of the statute adopted below. To

require a special license and bond of every person or vehicle using the bridge or tunnel would virtually destroy their usefulness (see Judge Madden, dissenting in part, R. 55–57). And to require that the bridge or tunnel obtain a special license and give bond for overtime customs services rendered to the vehicular traffic using its facilities would have the unreasonable effect of subjecting the owners of the bridge or tunnel to a liability measured solely by the customs inspection requirements of persons over whom they have no control. Cf. *International Ry. Co.* v. *Davidson*, 257 U. S. 506, 515. Moreover, it would be supportable only upon the fictional theory—unfounded in the record—that the bridge or tunnel was the "agent" of the vehicle using it.[46]

We respectfully submit, therefore, that the 1911 Act as amended does not apply to customs services performed at a bridge or tunnel, which

[46] The statute requires that application for the special license be made by the "master, owner, or agent, of such vessel or vehicle", and the extra compensation is to be paid by the "master, owner, agent, or consignee" thereof. These terms, at least with reference to vessels, the original ambit of the phrase, have a well-accepted meaning, representing a definite legal relationship between the vessel or vehicle and its cargo on the one hand, and the person or persons enumerated on the other. No similar or even analogous relationship exists between a bridge or a tunnel and a vehicle passing over or through it. It has never been contended that the bridge or tunnel became the agent of the vehicles by any consensual act, and there is nothing in the record to support such an agency.

were not required to obtain and did not obtain special licenses to unlade.[47]

IV

In awarding extra compensation for "overtime" services the court below erroneously failed to allow credit for that part of the base pay already received by respondents for such services

Respondents received a base pay of $2,100 annually for performing their regular tour of duty consisting of not more than 8 hours per day and 44 hours per week. (Customs Regulations 1937, Art. 1462; Appendix B, *infra*, pp. 73–74.) The Court of Claims rejected the Government's contention that if extra compensation is recoverable for services rendered as part of a regular tour of duty, it is entitled to have the amounts which it paid to respondents as base pay for the same services credited against the recovery (R. 52, 57). The result was a judgment which, when added to the base compensation already paid to respondents, awarded respondents pay at more than three times the base rate for a regular 44-hour weekly tour of duty.[48] Such a holding is directly op-

[47] Inasmuch as all services involved in the instant case were rendered prior to 1938, we are not here concerned with the 1938 amendment to Section 451 of the Tariff Act (Appendix A, p. 71), except insofar as its legislative history sheds light on the proper construction of the 1911 Act as amended.

[48] The extra compensation awarded for the overtime service is somewhat more than double the base pay (R. 43–46). The discrepancy may be accounted for by the fact that under

posed to the interpretation of the statute by its sponsor in Congress.—The 1911 Act, according to its sponsor, Congressman Moore of Pennsylvania, was intended to provide compensation for night services which, without the Act, would be performed "without any compensation at all" (Hearings, House Committee on Ways and Means on H. R. 9525, 61st Cong., 2d sess., pp. 461–463, 467–469). Mr. Moore stated (*Id.* p. 466):

> Mr. MOORE. Suppose a man for day work gets $3.50, for night work under this provision he would get $7. * * * I do not want you to think that we are trying to get three times the day pay for extra work at night.
>
> The CHAIRMAN. I did not understand anything of the kind.
>
> Mr. MOORE. A man who is on duty all day and who has to work all night ought to have extra compensation for the extra night work. It is excessive and extra, and he is perhaps entitled to more compensation. As modern conditions go——
>
> The CHAIRMAN. I understand that is the usual compensation demanded by labor unions throughout the country?

(At p. 470):

> Mr. FORDNEY. The compensation for night work would be more than twice the compensation for day work?

Section 5, the rate of overtime compensation is "one-half day's additional pay for each two hours or fraction thereof of at least one hour" beyond 5 p. m.

> Mr. MOORE. I think not, but so long as a man works in the daytime and then continues his work through the night, if the expense does not come out of the Government he should be paid double.

The fact that the compensation for overtime is called "extra compensation" does not preclude giving effect to the congressional intention, for it is "extra" in the sense that it is added to the compensation payable for the regular services at the usual hours. The denial of the credit for base pay results in the anomaly of compensation at the rate of $2,100 per annum for a customs inspector who performs services during an 8-hour shift between 8 a. m. and 5 p. m. on weekdays, and compensation at the rate of more than $6,300 per annum for a customs inspector who performs identical services during an 8-hour shift at night or on Sundays or holidays. The disparity between these rates is too startling to be attributed to Congress without more specific language in the statute, particularly in the light of the overtime rates effective in other branches of Government service.[49] The absence of any precedent for such a disparity, either in the Government or in private industry precludes stretching the language of the

[49] Compare Act of May 24, 1928, c. 725, 45 Stat. 725, as amended (39 U. S. C. 828), which allows a 10% increase in pay for certain postal employees for night service; Fair Labor Standards Act and Walsh-Healey Public Contracts Act, under which 1½ times the base pay is fixed for overtime.

1911 Act or its 1920 amendment to authorize it here.[50]

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be reversed and the case remanded with instructions to dismiss the complaint.

CHARLES FAHY,
Solicitor General.
FRANCIS M. SHEA,
Assistant Attorney General.
CHESTER T. LANE,
J. FRANK STALEY,
DAVID L. KREEGER,
Special Assistants to the Attorney General.
PAUL A. SWEENEY,
Attorney.

ROBERT CHAMBERS,
Chief Counsel,
FRED M. IVEY,
Attorney,
Bureau of Customs.

DECEMBER 1943.

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[50] The paucity of the legislative history on this point may be attributed to the fact that the "extra compensation" was generally thought by all concerned to be payable only for actual overtime services, hence for services for which no base salary had been paid. See pp. 35–45, *supra.*

APPENDIX A

STATUTES

Section 5 of the Act of February 13, 1911, as amended by the Act of February 7, 1920 (c. 61, 41 Stat. 402; 19 U. S. C. 267), provides:

> SEC. 5. That the Secretary of the Treasury shall fix a reasonable rate of extra compensation for overtime services of inspectors, storekeepers, weighers, and other customs officers and employees who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays, to perform services in connection with the lading or unlading of cargo, or the lading of cargo or merchandise for transportation in bond or for exportation in bond or for exportation with benefit of drawback, or in connection with the receiving or delivery of cargo on or from the wharf, or in connection with the unlading, receiving, or examination of passengers' baggage, such rates to be fixed on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian), and two additional days' pay for Sunday or holiday duty. The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other convey-

ance whenever such special license or permit for immediate lading or unlading or for lading or unlading at night or on Sundays or holidays shall be granted to the collector of customs, who shall pay the same to the several customs officers and employees entitled thereto according to the rates fixed therefor by the Secretary of the Treasury: *Provided*, That such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual lading, unlading, receiving, delivery, or examination takes place or not. Customs officers acting as boarding officers and any customs officer who may be designated for that purpose by the collector of customs are hereby authorized to administer the oath or affirmation herein provided for, and such boarding officers shall be allowed extra compensation for services in boarding vessels at night or on Sundays or holidays at the rates prescribed by the Secretary of the Treasury as herein provided, the said extra compensation to be paid by the master, owner, agent, or consignee of such vessel: *Provided further*, That in those ports where customary working hours are other than those hereinabove mentioned, the Collector of Customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports, but nothing contained in this proviso shall be construed in any manner to affect or alter the length of a working day for customs employees or the overtime pay herein fixed.

Sections 401, 450, and 454 of the Tariff Act of 1930 (c. 497, Title IV, 46 Stat. 708, 715; 19 U.

S. C. 1401, 1450, 1451) provide in part as follows:

SEC. 401. MISCELLANEOUS.

When used in this title or in Part I of Title III—

(a) *Vessel.*—The word "vessel" includes every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water, but does not include aircraft.

(b) *Vehicle.*—The word "vehicle" includes every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft.

(c) *Merchandise.*—The word "merchandise" means goods, wares, and chattels of every description and includes merchandise the importation of which is prohibited.

(d) *Person.*—The word "person" includes partnerships, associations, and corporations.

* * * * *

(f) *Day.*—The word "day" means the time from eight o'clock antemeridian to five o'clock postmeridian.

(g) *Night.*—The word "night" means the time from five o'clock postmeridian to eight o'clock antemeridian.

* * * * *

SEC. 450. UNLADING ON SUNDAYS, HOLIDAYS, OR AT NIGHT.

No merchandise, baggage, or passengers arriving in the United States from any foreign port or place, and no bonded merchandise or baggage being transported from one port to another, shall be unladen from the carrying vessel or vehicle on Sunday, a holiday, or at night, except under special license granted by the collector under such

regulations as the Secretary of the Treasury may prescribe.

SEC. 451. SAME—EXTRA COMPENSATION.

Before any such special license to unlade shall be granted, the master, owner, or agent, of such vessel or vehicle shall be required to give a bond in the penal sum to be fixed by the collector conditioned to indemnify the United States for any loss or liability which might occur or be occasioned by reason of the granting of such special license and to pay the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of section 5 of the Act entitled "An Act to provide for the lading or unlading of vessels at night, the preliminary entry of vessels, and for other purposes," approved February 13, 1911, as amended. In lieu of such bond the owner, or agent, of any vessel or vehicle or line of vessels or vehicles may execute a bond in a penal sum to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unlading of vessels or vehicles belonging to such line for a period of one year from the date thereof. At the request of the master, owner, or agent of any vessel, the collector shall assign customs officers and employees to duty at night or on Sunday or a holiday in connection with the entering or clearing of such vessel, or the issuing and recording of its marine documents, bills of sale, mortgages, or other instruments of title, but only if the master, owner, or agent gives a bond in a penal sum to be fixed by the collector, conditioned to pay the compensation and expenses of such

customs officers and employees, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to duty in connection with lading or unlading at night or on Sunday or a holiday.

* * * * *

Section 9 of the Customs Administration Act of 1938, c. 679, 52 Stat. 1077, 1082 (19 U. S. C. 1451) provides:

SEC. 9. So much of the last sentence of section 451 of the Tariff Act of 1930 (U. S. C., 1934 edition, title 19, sec. 1451) as precedes the words "gives a bond in a penal sum to be fixed by the collector" is hereby amended to read as follows: "Upon a request made by the owner, master, or person in charge of a vessel or vehicle, or by or on behalf of a common carrier or by or on behalf of the owner or consignee of any merchandise or baggage, for overtime services of customs officers or employees at night or on a Sunday or holiday, the collector shall assign sufficient customs officers or employees if available to perform any such services which may lawfully be performed by them during regular hours of business, but only if the person requesting such services"; and the said section 451 is further amended by adding at the end thereof the following: "Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign customs officers or employees to regular tours of duty at nights or on Sundays or holidays when such assignments are in the public interest."

APPENDIX B

Customs Regulations 1937

OVERTIME SERVICE

710 ART. 1242.[1] *Extra compensation.*—(a) Customs officers and employees performing services at night, or on Sundays and holidays, for lading or unlading of cargo or merchandise, or lading cargo or merchandise for transportation in bond or for exportation in bond or for exportation with benefit of drawback, or in connection with the receiving or delivery of cargo or merchandise on or from the wharf, or in connection with the unlading, receiving or examination of passengers' baggage, or in boarding vessels, or in the entrance and clearance of vessels, or in the issuance and recording of their marine documents and instruments of title, shall receive extra compensation, to be paid by the master, owner, or agent of the vessel, or by the transportation company. * * *

(c) The rates of extra compensation are payable in cases where the services of customs officers or employees have been duly requested and the officers or employees have reported for duty, even though no actual service may be performed.

(d) Customs officers and employees should be ordered to report for duty sufficiently in advance of the expected arrival of a train or vessel to

[1] Art. 1242 is substantially the same as Art. 1228 of the 1931 regulations, and Art. 1462 is substantially the same as Art. 1446 of the 1931 regulations.

properly safeguard the revenue. However, waiting time should be reasonable and compatible with the circumstances in each case.

(e) The extra compensation for overtime services is in addition to the regular compensation paid by the Government in the case of officers and employees whose compensation is fixed on the ordinary per diem basis and those receiving a compensation per month or per annum.

(f) Extra compensation for "waiting time" will not be allowed unless and until an officer or employee actually reports for duty. * * *

809 ART. 1462.[1] *Hours of service.*—(a) The official hours of officers, clerks, examiners, and employees, except those hereinafter specified, will be from 9 a. m. to 4:30 p. m., with a half hour for lunch.

(b) The official hours of the following employees will be: Staff officers, station inspectors, and inspectors to whatever duty assigned, sugar samplers, samplers, laborers, storekeepers, and outside messengers, from 8 a. m. to 5 p. m., 1 hour for lunch; verifiers-openers-packers and openers and packers, 8 a. m. to 4:30 p. m., one-half hour for lunch; customs guards not less than 8 hours.

(c) The above hours may be extended as the needs of the service demand, and such extension shall be without additional compensation, except as provided for in the act of February 13, 1911, as amended by the act of February 7, 1920.

(d) The act of February 7, 1920, also provides that in those ports where customary working hours are other than those above mentioned, the

[1] See footnote on p. 72.

collector of customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said port, but nothing contained in this proviso shall be construed in any manner to affect or alter the length of a working-day for customs employees or the overtime pay fixed for such employees. * * *

T. D. 49658, published July 21, 1938, p. 101:

Article 1242 (a) is amended to read as follows:

> (a) Customs officers and employees performing services at night, or on a Sunday or holiday, in connection with the lading or unlading of cargo, or the lading of cargo or merchandise for transportation in bond or for exportation in bond or for exportation with benefit of drawback, or in connection with the receiving or delivery of cargo on or from the wharf, or in connection with the unlading, receiving, or examination of passengers' baggage, provided a special license therefor has been granted, or performing any other services at night or on a Sunday or holiday which may lawfully be performed by them during regular hours of business, provided a request therefor has been made, shall receive extra compensation for overtime services, which extra compensation shall be reimbursed to the Government by the person to whom the special license was granted or by whom the overtime services were requested.

Article 1242 (g) is amended to read as follows:

> (g) Extra compensation is not authorized for any service performed by a customs officer or employee pursuant to his assignment to a regular tour of duty at night or on a Sunday or holiday.

APPENDIX C

1. Hearings before the Committee on Ways and Means, House of Representatives (61st Cong., 2d sess.), on H. R. 9525 (the companion bill of S. 6011, which became the Act of February 13, 1911, c. 46, 36 Stat. 899)

STATEMENT OF HON. J. HAMPTON MOORE, A MEMBER OF CONGRESS FROM THE STATE OF PENNSYLVANIA

461–463 Mr. MOORE. Mr. Chairman and gentlemen of the committee, the bill was introduced at a preceding session of Congress, and has been reintroduced in this Congress because there seems to be a demand for it at the various ports of the country, owing to the inability of the owners of vessels, consignees, agents, and others to take advantage of the nighttime to discharge their cargoes. The existing law provides that under certain conditions, the entry of a bond, for instance, the collector of the port may permit the owner or captain of a vessel to proceed to unlade between sunset and sunrise. It provides that there shall be compensation to those who engage in this work at the instance of the collector, but names only inspectors.

It has been found that in the discharge of a cargo it is necessary to employ assistant weighers, storekeepers, and others, but no provision whatever is made for their payment. For a time this lapse of the law was provided for by voluntary arrangement between the owner of the vessel and the col-

lector of the port wherever he might be located, by which a fund was established for the payment of those who did this extra or night work. That system was subject to abuse and in some instances, it is said, it was abused. It was finally abolished by an order of the Treasury Department. As the conditions are today, therefore, when a vessel arrives in a given port and the captain is anxious to make haste and to go about his business, provision can be made only for the payment of the customs inspectors; the storekeepers, watchmen, weighers, and others engaged in the work between sunset and sunrise, night hours, are left without any compensation whatever. In my own port, that of Philadelphia, the assistant weighers recently worked one hundred and fifty nights without any compensation at all. The inspectors were paid, but the rest of the men were not paid. One of the existing enactments provides that in order that shipping may be facilitated the captain of a vessel may report to the customs officer and obtain his leave to discharge the cargo at once. This is due to the fact that bonds are entered by certain existing lines that have been in existence a year or more.

* * * * *

So far as the payment of those not inspectors is concerned, I think the mind of the committee should be disabused of the fact that the Government would be financially affected by the passage of this proposed law. The owner of the vessel pays for this extra work. He is perfectly willing to pay for the extra work. Not a cent comes out of the Treasury, and you would not be legislating

at all with regard to the finances of the Government. The owner of a vessel comes in and wants to get away, and he asks the privilege of unlading at night between sunset and sunrise, the hours proscribed under the law. He offers a bond and is perfectly willing to pay the inspectors for whom compensation is provided at the discretion of the Secretary of the Treasury, but he can not pay, except in an indirect way, the weighers, the storekeepers, and the watchmen.

The provisions of this bill contemplate the entry of a bond that will enable the owner or agent of a vessel to provide through the collector of the port, at the instance and by the direction of the Secretary of the Treasury, a fund from which these employees of the Government may be paid. They ought to be paid for their extra time. They serve the Government and receive compensation for the service they render, but they are not altogether serving the Government when they do this work in the night hours; they are serving very largely the owner or the agent of the vessel, who is perfectly willing to pay for the services. Now, it does seem to be a very unfair proposition that the law should specially favor the inspectors of customs with regard to this night work, and should expressly forbid payment to the assistant weighers, storekeepers, watchmen, and others who are necessarily employed upon the work.

* * * * *

Mr. HULL. This bill does not provide that all the persons shall be paid by the owners of the vessels; only certain persons, and the others by the Government?

Mr. MOORE. It makes no provision whatever for any payment by the Government.

Mr. HILL. It says on page 5:

> Customs officers acting as boarding officers, and any customs officer who may be designated for that purpose by the collector of customs, are hereby authorized to administer the oath or affirmation herein provided for, and such boarding officers shall be allowed extra compensation for night services.

Is that included under the previous provision? It does not seem to be.

Mr. MOORE. That is clearly to come out of the fund which is set aside by the owner or agent of the vessel for the payment of this night service.

Mr. HILL. It does not say so.

Mr. MOORE. If it does not say so, I am perfectly willing that it should be made clear.

* * * * * *

463–465 Mr. DALZELL. On page 4 the bill provides that "The Secretary of the Treasury shall fix a reasonable rate of extra compensation for night services of inspectors, storekeepers, weighers, and other customs officers and employees," etc., and then it goes on to provide that the extra compensation shall be paid by the vessel owners, but at the end of the paragraph it reads:

> Customs officers acting as boarding officers and any customs officer who may be designated for that purpose by the collector of customs are hereby authorized to administer the oath or affirmation herein provided for, and such boarding officers shall be allowed extra compensation.

Now, that is clearly extra compensation to be paid by the Government, and not by the vessel owner.

Mr. MOORE. If you think so, I am perfectly willing that it should be made clear.

Mr. DALZELL. Do you not think it is, from the language I have read?

Mr. MOORE. It may be susceptible of that interpretation. I have not looked at it in that way, because the whole purpose of the bill was to put the expense upon those for whose convenience we propose to pass it. One line would simplify that. Is not that your understanding, Mr. Bennet?

Mr. BENNET. Yes, sir. It seems to me that language is simply surplusage.

* * * * *

Mr. MOORE. I want to say that my understanding of this bill and of that provision is that in order to facilitate commerce and to give convenience to the shippers, we have proposed to accommodate them merely in the matter of this night service at their own expense, and we propose that the expense, whatever it may be, shall not be distributed at their option where it might be subject to abuse, but that it shall be entirely fixed and regulated by the Secretary of the Treasury, and shall be administered or distributed through the collector of the port at the direction of the Secretary. The only purpose is, as I understand it, to enable a man who wants something done for himself, the owner or agent of a vessel, to say, "I would like the privilege of unlading at night; I would like to use the twelve hours I am now prevented from using; I would like the op-

portunity of getting away, and I am perfectly willing to pay, through the proper officers, whatever the extra cost may be"; and my purpose, as the proponent of this bill, is to have that fund so created distributed at the instance of the Secretary of the Treasury through the collector of the port, because if in one place one collector has discretion which is at variance with the discretion of another collector, or if at one port one shipowner is willing to pay more in his haste than another shipowner, or if we give an option to the men who provide the fund as to how it shall be distributed, then there would be a great deal of difficulty in the ports and there would undoubtedly be abuse, because one man would pay more than another man. If you put them under the Secretary of the Treasury and systematize the business you have a check upon every dollar received and expended and you have a uniform system of payment which it seems to me is extremely desirable and would tend to avoid abuse.

* * * * *

466 Mr. MOORE. Suppose a man for day work gets $3.50, for night work under this provision he would get $7.

The CHAIRMAN. That is what you intend?

Mr. MOORE. Yes, sir; that is my understanding.

Mr. GAINES. Not to exceed $7.

Mr. MOORE. The Secretary of the Treasury might fix it at a less rate.

The CHAIRMAN. I think the committee can fix that.

Mr. MOORE. That is our understanding. I do not want you to think that we are trying to get three times the day pay for extra work at night.

The CHAIRMAN. I did not understand anything of the kind.

Mr. MOORE. A man who is on duty all day and who has to work all night ought to have extra compensation for the extra night work. It is excessive and extra, and he is perhaps entitled to more compensation. As modern conditions go——

The CHAIRMAN. I understand that is the usual compensation demanded by labor unions throughout the country?

* * * * * *

2. *Hearings before a Subcommittee of the Committee on Ways and Means, House of Representatives (66th Cong., 1st sess.), on H. R. 6577, the companion bill to S. 3418, which became the Act of February 7, 1920, amending Section 5 of the 1911 Act (c. 61, 41 Stat. 402)*

STATEMENT OF MR. WILLIAM H. BOND

3 Mr. BOND. I reside in Boston, and I represent the inspectors of customs and their various associations all over the country.

Mr. TREADWAY. You represent them by official selection by them?

Mr. BOND. It amounts to that virtually. Our national organization has not had a meeting for a long time, and the inspectors for the Atlantic coast have done most of this business, so that the inspectors at New York, Boston, Philadelphia, and Baltimore are the most concerned in selecting me. I am somewhat known to the inspectors in the West, and they are aware that I am in this work, and have given their consent.

Mr. TREADWAY. So far as your organization in the East is concerned you have been designated by them?

Mr. BOND. I have been delegated to do this.

* * * * * *

5-6 Mr. TREADWAY. This may start us right. This calls for the hours of labor to be from 8 o'clock a. m., to 5 o'clock p. m.—8 hours. What were the hours specified in the act of February 13, 1911?

Mr. BOND. In the act itself, I think the hours are specified as from sunrise to sunset. That was the original law, I think, in 1789, the basic law of the customs.

Mr. TREADWAY. That is the time of docking boats, isn't it, practically?

Mr. BOND. This law—let me explain that please. This law of 1789, I think that is the date—is the basic law, so-called, of the customs. This was the practice at that time, to work from sunrise to sunset. Inspectors at that time were employed temporarily. They were paid $1.25 a day. Whenever an inspector was needed he was sent for and worked as long as needed and went home to his farm or whatever he had to do, and when needed again he came back. That was the condition of things under that law. Every time the law has been reenacted, or that particular phase of it has been reenacted in other laws, that seems to be carried right along down. Even the report of the Tariff Commission, which is now before Congress, carries that same thing right along. That has been interpreted by the department to mean from 7 a. m., to 6 p. m., because, of course, from sun-

rise to sunset is not a reasonable and workable provision. In the summertime it would be from 3:30 in the morning until 8:30 at night, and in the winter from 7:00 or 7:30 to half past 3 or quarter to 4.

Mr. TREADWAY. That gives you an 11-hour day without extra compensation?

Mr. BOND. Yes; and I want to say right here, it is an 11-hour day. For many years I have eaten my lunch with a sandwich in one hand at my desk and a pen or pencil in the other hand. We can have the opportunity of going aboard a ship, when we have a ship at the dock for lunch, but it happens very, very often that I can not get away to lunch.

* * * * * *

Mr. TREADWAY. The idea is, you are first endeavoring to change the present provision from 11 hours to 9, or endeavoring to provide eight hours of work, to follow an eight-hour day, and that you should get extra compensation for overtime?

Mr. BOND. Yes; I want to say here that our hours of labor from the time when this was originally started under the old law through succeeding laws our hours were made to correspond with the hours during which it was customary to work unloading boats. That is to say the law does not say that the inspector's hours are such and such. It says that the hours for discharging vessels shall be between sunrise and sunset, and as construed by the department that means from 7 to 6, and yet the hours for discharging ships, the hours during which longshoremen were paid a day's pay, just as

in the case of steamship and railroad employees, who also worked from 7 to 6 during the last year, those hours have been changed so that now—and I want to say that this is very largely by Government direction—as you know the hours of steamship employment and the hours of railroad employment are eight hours, from 8 to 5.

* * * * * *

Mr. TREADWAY. Let me get down to your pay for services. You get $5 a day, which would mean something like $1,600.

Mr. BOND. $1,825, 365 days. We are paid a regular annual salary for every day in the year. I would say in regard to that per diem salary that it is a relic of the method of paying of 120 years ago, when inspectors were only occasionally employed. Now, they are constantly employed, but it has not been changed. We are trying to get a salary bill through Congress.

* * * * * *

Mr. BOND. * * * For an inspector, there is no hour of the 24 hours that is his own. We never know when we are to be called upon. Some years ago I became affiliated with an organization which required my presence for three months on the second Wednesday of each month. I was required to be there. They could not do very well without me if they were going to do what they had proposed. On each of those three occasions a passenger ship was docked at 5:30 in the afternoon and I was detailed to examine the baggage. I can not buy a ticket to a theater with any certainty that I can go.

One year I was detailed to work on the Hamburg-American Line. I thought it would be an advantage to learn to speak German. German was in better favor than now. During three months I was able to attend only two sessions of the school and had to give it up.

We never can tell until 4 o'clock or half past 4 in the afternoon whether our services are going to be required after hours. My wife never knows when I am coming until I telephone that I am about to start. So that the condition in regard to us is rather unfavorable.

Mr. TREADWAY. What is the attitude of the department toward this legislation?

Mr. BOND. Mr. Fordney has a letter, a copy of which was sent me. I have it right here.

Mr. TREADWAY. I think you had better give it to the stenographer.

(The letter follows.)

TREASURY DEPARTMENT,
Washington, September 25, 1919.

Hon. J. W. FORDNEY,
Chairman Committee on Ways and Means, House of Representatives.

MY DEAR CONGRESSMAN: I have your letter of the 18th ultimo inclosing for recommendation a copy of H. R. 6577, which is a bill amending the act of February 13, 1911, relative to the lading and unlading of vessels at night, the preliminary entry of vessels, and for other purposes.

The bill amends section 5 of the act of February 13, 1911, so as to permit the payment of extra compensation to customs officers or other employees of the customs who may perform services in connection

with the lading or unlading of cargo of vessels or other conveyances, the receiving or delivery of cargo on or from the wharf or bonded warehouse, or the lading of cargo or merchandise for transportation with the benefit of drawback, or for the examination of baggage of passengers.

Under the provisions of the act of February 13, 1911, as construed by the Attorney General in an opinion rendered under date of March 3, 1913 (T. D. 33275), baggage is not cargo, and the department is therefore precluded from granting extra compensation to customs inspectors who are engaged in the examination of baggage. These inspectors are frequently required, during the season when ocean travel is heavy, to work on Sundays and holidays and at night. In many instances they are required to work until a late hour in the night after having worked all day, and for this overtime they receive no compensation.

I will be very glad to be able to have inspectors who examine passengers' baggage placed in the same class as the other inspectors, so far as the payment of extra compensation is concerned. * * *.

The department has under consideration a plan whereby boarding officers and inspectors of customs will be assigned to duty in eight-hour shifts and will not, therefore, be called upon to work overtime and no extra compensation paid to officers assigned to the night shift. In order to carry out such plan it will be necessary to secure additional appropriations, and, pending the adoption of the plan it will, of course, be necessary to detail inspectors and other employees for night work.

I am of the opinion that when overtime work is required extra compensation should be paid as outlined in the bill now under consideration. I therefore recommend the enactment of this bill into law.

Very truly, yours,

L. S. ROWE,
Assistant Secretary.

* * * * *

13 Mr. CRISP. * * * How many Government employees engaged in inspecting work will be affected by this bill if it passes?

Mr. BOND. It will be pretty difficult for me to tell. This bill, at the bottom of the page and at the top of the second page, prescribes the kind of work which is to be performed. You understand the Government pays no overtime. This is overtime which is paid by the steamship companies. Now, there are inspectors of customs at various places, such as the Texas border and the Canadian border, who work long hours, and they do not collect from anybody else. It is entirely for the Government. The Government pays no overtime. There is no way that we can protect them in a bill of this nature.

* * * * *

18–19 Mr. TILSON. If you finish at 5 then you have no money coming under the proposed bill; only your day's pay.

Mr. BOND. And do not work any overtime?

Mr. TILSON. Yes.

Mr. BOND. Surely.

Mr. TILSON. I agree with you that you should be paid well for overtime.

Mr. BOND. I claim when we do work overtime—mind you it is for the accommodation of other people—we should be paid for it.

* * * * * *

3. Congressional debates on the bill which became the Act of February 7, 1920, amending Section 3 of the 1911 Act

59th Cong. Rec.

IN THE SENATE

640 Mr. KING. Mr. President, is this the bill to which the Senator alluded a few days ago, and stated, either upon the floor of the Senate or to a number of Senators who approached him in connection with it, that it involved no expense whatever upon the part of the Government?

Mr. CALDER. No expense whatever.

Mr. KING. It merely permits the owners of vessels and the consignees and employees upon the vessels, or the longshoremen, to make such contracts as they please respecting the unloading of the vessels at night?

Mr. CALDER. Yes; and it permits customs officers to work at night and to be paid by the shipowner, with the consent of the collectors of customs in the respective districts. No expense whatever is incurred upon the Government.

Mr. KING. Mr. President, I would like to ask the Senator two questions: First, what reason is there for the Government to fix the terms of special contracts that shall be entered into between the owners of vessels and the employees of the Government for the purpose of securing the un-

loading of vessels on Sundays or holidays? In other words, why should the Government intervene and prescribe the contractual relations that shall exist between the parties? That is one question.

Secondly, if this bill should pass and there should be any considerable amount of overtime work done under the bill, would it not interfere with the efficiency of the employees of the Government in the performance of their duties to the Government? I can readily conceive that if there is very much Sunday work or night work the employees working for the Government and being called upon to perform this additional service would not be in condition to render efficient service to the Government. It might very materially impair their serviceability to the Government and interfere with the proper performance of their duties to the Government.

Mr. CALDER. Mr. President, this bill was prepared by the Treasury Department. We have had a law on the statute books for a number of years permitting the lading and unlading of vessels at night, for which the Government employees were paid in some such manner as is prescribed in this measure. But a year or two ago the Attorney General held that men could not be paid for passing upon the baggage taken off ships at night, but could be paid for supervising the discharging of the cargoes. That caused some difficulty, because we found a customs official examining baggage at night and being unpaid for it, and right alongside of him a customs official examining cargo and being paid for that.

These men do not work very much at night. I venture the statement that they do not average more than a day a week at the most, perhaps four or five days a month. If the Government did not have some control over it, and the shipowner were compelled to bargain with the customs inspectors and other Government employees all sorts of compensation might be demanded. This bill permits the Government to collect from the shipowners not in excess of double pay for overtime. The collector of customs fixes the pay for overtime, but cannot allow more than double time for nights and Sundays. If I own a vessel and wish to have it discharged at night, it would be necessary for me to obtain a permit from the collector of customs to supervise the job. He would assign regular customs employees and keep track of their time, and the shipowner would pay the collector for it, and then, in turn, the men would be paid by the Government. The scheme is one that has been carefully considered, I will say to the Senator from Utah [Mr. King], and meets with the approval of the Treasury Department and the Shipping Board as well; it is also satisfactory to the men who work in the Customs Service.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

IN THE HOUSE

* * * * *

2171 Mr. BEE. I wanted to ask if there was enough of this to justify the employment of

additional men, instead of the employment of these men overtime?

Mr. TREADWAY. I should judge that there are ample men for the service, for if additional men were employed there would be the rush hours just the same. If two boats, for instance, are being unloaded at one of our minor ports at the same time, it can be seen that the need for overtime work will be just as likely to occur as though there were additional men for a few particular hours; so that it is better not to raise the number of employees, but pay a living wage to the men who for many years have given faithful service in this line of work.

Mr. BEE. Under existing law, they are not permitted to work over eight hours, as I understand it. That is, an eight-hour day is fixed?

Mr. TREADWAY. No, sir. That is what we are endeavoring to change in this act. The present law provides for a 10-hour day, and here we fix it at 8 hours, with a provision for overtime beyond that.

Mr. BEE. So as to conform to the standard fixed elsewhere in the country?

* * * * * *

Mr. DUPRE. Mr. Chairman, I intend to offer the following amendment, and I might as well discuss it now. I will ask the Clerk to read the amendment.

The Clerk read as follows:

> Amendment offered by Mr. Dupre: Page 3, line 10, strike out the quotation marks, insert a colon and the following:
>
> "*Provided further*, That in those ports where customary working hours are other

than those hereinabove mentioned the collector of customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports, but nothing contained in this proviso shall be construed in any manner to affect or alter the length of a working day for customs employees or the overtime pay herein fixed."

Mr. DUPRE. Mr. Chairman, as those who have caught the purport of the amendment will discover, no hostility to the bill is intended by it. On the contrary, I am heartily in favor of the measure, both in its fixing an eight-hour day and in its overtime provisions. The amendment is offered simply to meet the situation that exists in my home city of New Orleans and possibly in other ports of the country. The bill as drawn provides for overtime pay between the hours of 5 o'clock postmeridian and 8 o'clock antemeridian, proceeding on the theory that working hours begin in all ports at 8 o'clock in the morning and end at 5, with an hour for lunch. It happens that in the city of New Orleans conditions are different, as was set forth in a telegram received by me from the agent of the New Orleans Steamship Association. * * *.

Mr. DUPRE. In accordance with that request and in accordance with the condition that exists in New Orleans, I have offered the amendment, which is entirely permissive. It leaves with the collector of customs the authority to regulate the hours of customs employees so as to agree with the prevailing working hours in those ports; but I have safeguarded the eight-hour day which this bill provides for, and I have safeguarded the provision for overtime by adding the words—

But nothing contained in this proviso shall be construed in any manner to affect or alter the length of a working day for customs employees or the overtime pay herein fixed.

I have submitted that amendment to the two majority members of the subcommittee of the Ways and Means Committee who considered the bill, the gentleman from Massachusetts, [Mr. Treadway], and the gentleman from Connecticut [Mr. Tilson], and they think the amendment is entirely unobjectionable, saying that the conditions referred to had not been drawn to the attention of the committee.

Gentlemen here will realize what would happen if longshoremen, who have a way of their own about many things, decided to go to work at 7 o'clock and work until 4, and under the law the customhouse employees, who should work concomitantly with the longshoremen, could not get any overtime pay until between the hours of 5 p. m. and 8 the next morning. There would be a hiatus between 4 o'clock when the longshoremen stopped work and 5 o'clock when the customhouse employees would begin to get their overtime, and naturally the latter would not want to work in the interim. The result would be very unfortunate, and this merely allows the collector of customs to say that those two bodies of men, both of whom are essential to unloading and loading the ship, may be allowed to work at the same time. It is not mandatory in any way, but merely discretionary with the collector. A similar telegram has been received by my colleague Mr. O'Connor, of Louisiana, who is here in the Chamber, and who shares

with me the views expressed by me both as to this bill and to the amendment proposed.

* * * * *

2175 Mr. BRIGGS. * * * The measure provides, however, that this cost does not fall upon the Government but falls upon the owner, agent, master, or consignee of such vessel or conveyance who wants the services of these inspectors, weighers, and other employees to discharge their vessels at a time when these men ordinarily would not be required to perform that duty. If those gentlemen want that convenience and that service and are willing to pay for it, I do not see why Congress should hesitate to grant that privilege to these men who are as faithful a body as any that the Government employs. And this recognition of the eight-hour day in this Government service, and which obtains in other branches of the service, is such also as is due them, and I am glad to see recognition accorded them by the committee which reported this bill and by the Senate that passed it, and I hope it will be passed by this committee and the House.

* * * * *

2176 Mr. TILSON. Mr. Chairman, when this bill was first presented to the subcommittee of which I was a member I confess it gave me something of a shock. When I read the bill and saw that it gave a day's overtime for any time beyond the prescribed day, it somewhat disturbed me. For instance, it provided in the original bill that after the first eight hours any services rendered, even one minute, should entitle the inspector to an extra full day's pay. The bill as passed by

the Senate was somewhat different, and this in turn has been somewhat changed by our committee, until it is now in its present shape. Upon a first reading even yet it would seem that we are rather liberal with other people's money. You will note that for a little overtime we allow an additional day's pay, and for a little more overtime still another day, so that within the compass of one 24-hour period an inspector can make three and one-half days' pay. A somewhat closer examination, however, will reveal this fact, that these men are paid a very low salary—$4, $5, or $6 per day—and that the hours which they have to work are not at all such as the average man would arrange for himself as an ideal schedule.

* * * * *

Mr. PARRISH. I would like to know, for the benefit of the Record and myself, personally, how much they get per day?

Mr. TILSON. They get $4, $5, or $6 as their basic salary. There are three different grades. If they work only a day, without overtime, that is what they get. The old schedule, under which they now work, is a 10-hour day, beginning at 7 o'clock in the morning and running until 6 o'clock at night, with one hour off for luncheon. The rule provides that after 6 o'clock any time over entitles them to an extra day. They gain something on this arrangement, because they often have to work overtime, and so they undoubtedly gain many overtime days in that way.

What this bill seeks to do is to enact into law what has been a Treasury regulation, with this

change, that instead of a 10-hour day it makes an eight-hour day, which the subcommittee thought proper. Instead of providing that for any time after an eight-hour day the inspector shall receive an extra day's compensation, we provide in the bill that for any time beyond two hours or a major fraction of two hours—that is, for any time beyond an hour—he shall receive an additional half-day's pay. Even this would seem liberal were it not for the very low salary and the very bad hours which these men have to work. It seemed to the subcommittee that, taking the regulations which have prevailed for many years, and taking the very low compensation which these men receive per day, the schedule as fixed in this bill is not more than fair for them.

* * * * *

2177 The CHAIRMAN. The question is on agreeing to the amendment to the amendment.

The amendment to the amendment was agreed to.

* * * * *

Mr. LONGWORTH. I reserve a point of order against the amendment for the purpose of hearing an explanation of it.

* * * * *

Mr. DUPRE. * * * This amendment has the approval of the two gentlemen on the subcommittee of the Committee on Ways and Means, the gentleman from Massachusetts [Mr. Treadway] and the gentleman from Connecticut [Mr. Tilson], who have considered this measure. The bill in question, in providing for overtime pay, fixes the same between 5 o'clock p. m. and 8

o'clock a. m. It happens that in the city of New Orleans the working hours of the longshoremen are from 7 a. m. to 4 p. m., and in order that there shall be no conflict between this bill and the working hours of the laboring men of that city, and possibly in other ports, this proviso simply authorizes the collector of customs to adjust the hours of the customhouse employees with those of the prevailing working hours in that city. In other words, if the men begin their work at 7 o'clock and work until 4, the collector of customs can provide that the overtime shall be from 4 p. m. until 7 in the next morning instead of from 5 p. m. until 8 o'clock the next morning. It is entirely permissive. If the collector of customs sees any reason why it should not be done, it is within his authority not to do it, and I have safeguarded absolutely any possibility of lengthening the working day to more than the eight hours provided by the bill or of interfering with the overtime charge in any way.

2178 Mr. TREADWAY. As I understand it, it is simply to conform the hours in the lading and unlading of vessels and the customhouse hours at that port.

Mr. DUPRE. Entirely; and at other ports, for aught I know. * * *

The amendment was agreed to. * * *

Mr. SAUNDERS of Virginia. I am speaking of what is in the bill under consideration. "The extra compensation" is "to be paid by the master, owner, agent, or consignee of such vessel." To whom? You have to look a long ways further on to ascertain to whom it shall be paid. The bill reads that "whenever such special license or

permit for immediate lading or unlading at night or on Sundays or holidays shall be granted to the collector of customs," and so forth. But nothing is intended to be granted to the collector.

I suggest, and I think the change of phrasing will make a much better sentence, that the language of the bill should be recast so as to read as follows: "Whenever such special license or permit for immediate lading or unlading, or for lading or unlading at night, or on Sundays, or holidays, shall be granted, the master, owner, agent or consignee of such vessel shall pay said extra compensation to the collector of customs, who shall pay," and so on.

Mr. TREADWAY. I think the gentleman's language is clearer, but the bill as prepared follows the identical language now in the law.

Mr. SAUNDERS of Virginia. This is very involved language, even if it is the language of the original law.

4. *Hearings before the Committees on Commerce, United States Senate (67th Cong., 1st and 2d sess.), on S. 1504, S. 1774 and S. 2188. S. 1504 provided for the extension to immigration inspectors of the overtime pay benefits that were in effect as to customs inspectors; S. 1774 provided that the Government and not the carrier should pay extra compensation for overtime customs services rendered for ships operating on regular runs of not more than 200 miles in length; and S. 2188 undertook to exempt railroads, bridges, and ferries from the payment of overtime under the 1911 Act as amended*

15 STATEMENT OF MR. W. H. BOND, BOSTON, MASS., PRESIDENT NATIONAL ASSOCIATION OF CUSTOMS INSPECTORS

* * * * *

Mr. BOND. Mr. Chairman and gentlemen of the committee, when this bill, S. 1774, was introduced in the last session, the number then being, I think, 4888, the chairman of this committee brought it to my attention and asked if this Association of Customs Inspectors of the United States had any objection to the passage of the bill. We registered our objections, and those objections are on file with this committee. I have had considerable correspondence with Senator Jones, chairman of the committee, both in relation to that bill and to the same bill now pending before the committee under S. 1774. Our objections are set in detail in that correspondence.

* * * * *

16 Mr. BOND. * * * In the first place, I will take Mr. Allen's testimony, where he speaks of inspectors being paid for overtime from the close of the day to the close of their overtime employment, whether they are constantly at work between those times or not. And this, gentlemen, is not new. The law of 1911 covered that procedure exactly. The only difference between the law of 1920 and the law of 1911 is that the 1920 law shortened the day in accordance with modern practice from 10 to 8 hours, and made the

17 law apply also to the inspection of passengers' baggage. You understand that we have always received overtime pay, which was paid by the transportation companies for work on lading and unlading of cargo, and the rate of

pay prescribed by the department was one day's pay for any time up to 11 p. m. and two days' pay for any time after 11 p. m. That was like our original proposal when our law of 1920 was introduced, but because of objection of members of this committee the language of the bill was changed to its present form. So that the "waiting time," or the intervals after the close of the day until overtime work is completed, has always been paid for, the only difference now being that it applies to work on baggage and, consequently, the expense to the steamship companies is somewhat greater. * * *

18 The law now in effect provides for payment of inspectors when they work overtime in the examination of passengers' baggage, which is done for the accommodation of steamship companies, just the same as cargo work. That was the point emphasized before this committee before the passage of the bill—on night work or Sunday work, with two men employed, one working on cargo and the other on baggage, both are entitled to overtime pay. That was so manifestly fair that Congress agreed to it.

* * * * *

22 Mr. BOND. * * * Mr. Allen also spoke of the money being paid by the Government for overtime service, as is provided for by this bill, S. 1774. And you have a letter from the department which tells you why that should not be done. That letter is on file with this committee. There is no reason, where the accommodation is extended to the steamship companies, why the Government should stand the expense.

The Government pays for the service during the ordinary hours of business. When the arrival of ships occurs after the regular hours and the accommodation is for the benefit of the steamship companies, they should bear this expense for overtime inspections the same as they bear their other ordinary expenses. Mr. Allen represents steamship companies, and he says that a half day's pay for two hours' overtime service is perfectly fair, so you can see that they do not consider it an overcharge. They do not claim that the rate is too high, but they only want to pay for the actual service performed.

* * * * *

26 Mr. BOND. * * *. Mr. Bronson also says in his testimony, in complaining about paying for overtime:

> A man who does night service can spend his days wherever he pleases. He stays at home until half past 8 or whatever time is necessary for him to get his car and come down there.

We say that that man is not free, even if he is at home getting his supper or anywhere else.

Those three men have been hard at work all day, since 8 a. m.; then one of them is off duty constantly from 5 o'clock on, while the other two have just about time to run out home, clean up, and get their suppers, and they are back on the job again not later than 8:30, and none of the three leave until the work on the night boat is completed. His insinuation that these inspectors are doing nothing during the day is just as untrue as his other testimony.

Senator NELSON. Let me ask you a question. Is not the man that does night duty immune from day duty?

Mr. BOND. Not at all. I am at work at my dock from 8 o'clock in the morning until 5 o'clock in the evening. Then I may continue on my own ship or perhaps it may be necessary to change to another ship, and I may work all night, as many times I have done, and then report back to my dock and continue working there.

Senator NELSON. But what about the next day?

Mr. BOND. The next day I continue at my work just exactly the same.

Senator FERNALD. Is there but one crew?

Mr. BOND. Just one crew. There are some places on the border where it is practicable to have three 8-hour shifts for railroad work, but there is no other place where that is practicable. * * *

That deals with a place where train service is not continuous at night. At other places, like Buffalo, where trains are in operation at all hours of the 24, the Government maintains three 8-hour shifts of inspectors, and no bills are rendered against the railroad companies except for Sundays and holidays. These bills, I may say, are not being paid, as the railroads are stalling in the hope that something may happen either in Congress or in the courts which will relieve them. In the meantime the inspectors are continuing to render the overtime service and looking around for somebody in authority who has interest enough in them to defend them. Across the river from Buffalo the Canadian customs officers, working 12 hours a day, are re-

ceiving from these same railroads 4 hours' overtime every day besides overtime for Sundays and holidays.

* * * * *

Mr. BOND. As I have already said, at points where railroad train passage is constant during the 24 hours we maintain a 24-hour service in three 8-hour shifts, and no bills are rendered for week-day service against the transportation companies. At these points in Minnesota, according to what you say, Senator, the only overtime is for about two hours in the evening.

Senator NELSON. Let me ask you, where they have three crews, do they get extra time for night work?

Mr. BOND. No, sir; the only bills they render in such case are for the seventh day.

Senator NELSON. And for Sundays, too?

Mr. BOND. For Sundays; yes. That is what I mean when I say that. They render a bill against the railroad company for the seventh day.

Senator NELSON. For double pay?

Mr. BOND. Yes. In some of those places it is not necessary to have three 8-hour shifts, because, as you say, the train arrives early in the evening, and then there is no more business, and it would be foolish for the Government to expend money to maintain three shifts.

Across the river from the port of Buffalo there is a Canadian port, and railroads cross from Canada into this country and from this country into Canada at that point. Our men are retained there in three 8-hour shifts and they have no overtime on week days, but they do render bills

for Sundays and holidays, for which any man would be entitled to extra compensation.

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38–39 OFFICE OF THE SECRETARY,
TREASURY DEPARTMENT,
Washington, Feb. 2, 1921.

The Chairman of the Committee on Commerce,
United States Senate.

SIR: I desire to acknowledge your letter of the 24th of January, requesting that I furnish the committee on Commerce with such suggestions as I may deem proper touching the merits of S. 4888, a bill to amend further section 5 of the act of February 13, 1911.

* * * * *

S. 4888, if enacted into law, would require the Government, rather than the steamship companies requesting the services, to pay, at the rates prescribed in the act of February 7, 1920, for the performance of any of the overtime services mentioned therein, in all cases of steamship companies operating on regular runs between ports in this country and ports in a foreign country not more than 200 miles in length. The classification would include ships running between the United States and British Columbia, the United States and Canada, the United States and Cuba, and the United States and the Bahama Islands.

Permit me to state that I think the Government should not be required to pay extra compensation for overtime service, as provided in S. 4888, which is performed entirely for the convenience of the steamship companies and their patrons. Moreover, the passage of such a bill would establish a

discrimination in favor of a specified class of steamship companies.

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Respectfully.

D. F. HOUSTON, *Secretary.*

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TREASURY DEPARTMENT,
61 UNITED STATES CUSTOMS SERVICE,
Buffalo, N. Y., October 22, 1921.

MR. ERNEST FRITSCHI,
United States Customs Inspector,
North Buffalo, N. Y.

SIR: * * *

I have a very strong conviction that every employee in the customs service is entitled to one day's rest in seven, and should not be required to work every day in the year aside from two weeks' annual leave, as the majority of the customs employees in this district have to do. * * *

I believe it more desirable that every employee should have one day's rest in seven, but as long as the men are required to work seven days a week I believe that they are entitled to the overtime pay for Sunday and holiday work, and that the act should be made broad enough to include all customs employees who are required to work on Sundays and holidays. * * *

Respectfully,

GEO. G. DAVIDSON,
Collector of Customs.

62 * * * * * * *

H. W. SMITH,
Special Deputy Collector.

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STATEMENT OF MR. G. F. SNYDER, REPRESENTING WABASH RAILWAY CO.; MINNEAPOLIS, ST. PAUL & SAULT STE MARIE RAILWAY CO.; AND SPOKANE INTERNATIONAL RAILWAY CO.

87 Senator RANSDELL. You say there is a 24-hour service at Detroit?

Mr. SNYDER. Yes.

Senator RANSDELL. How long has that been in existence?

Mr. SNYDER. A good many years; but not for Sundays and holidays.

Senator RANSDELL. How is that service regulated out there?

88 Mr. SNYDER. They are still billing the carriers for this service on Sundays and holidays.

Senator RANSDELL. Do they require them to pay overtime, or is the time divided into eight-hour shifts and they get paid for their regular eight-hour shifts?

Mr. SNYDER. They get double time for Sundays and holidays. And the only reason the railroads are not paying that money today is because of the injunction they secured and the litigation now pending in the courts. If the railroads are not successful in that litigation then they will have to pay all these bills that have been rendered.

Senator RANSDELL. Is that the only place in this country where that custom prevails?

Mr. SNYDER. The only place that I know of.

* * * * *

89 Mr. SNYDER. And we say we have no objection to the men receiving overtime, we simply object to paying it ourselves, and it is for the customs division to say how that service

may be best regulated. If a man works overtime after his 8-hour shift he should receive overtime for that work, the same as is done with railroad employees. The railroad employees are going to be very much dissatisfied if they see these customs men come down to meet a train at midnight and perhaps get two days' pay for overtime to meet that train.

STATEMENT OF MR. A. L. JAMES, ASSISTANT GENERAL SOLICITOR, GREAT NORTHERN RAILWAY CO.

95 Senator RANSDELL. * * * These men are entitled to overtime, and somebody must pay them. Do you think it would be better to have this service on a 24-hour basis, as suggested by Mr. Snyder? As a practical proposition, what would you as a citizen and taxpayer suggest to us as the lawmakers?

Mr. JAMES. These men should, of course, receive reasonable pay for their work. Now, then, it occurs to me that it is simply a question of whether it would be cheaper to pay these men overtime for the work they do on these trains, which takes only a few minutes, or whether it would be cheaper to put in a 24-hour service. Now, considering the situation at most of these stations along the Great Northern, I think it would be cheaper to pay the men overtime than to put in a 24-hour service, because there are only three or four or five trains a day at most of those places; two passenger trains a day and three freight trains a week, or four freight trains a week. It is simply a proposition of which method would be the cheaper for the Government

and give these men a fair compensation for their work.

STATEMENT OF MR. J. H. FISHBACK, WASHINGTON REPRESENTATIVE OF THE GRAND TRUNK SYSTEM

96 Mr. FISHBACK. * * * Some months ago I was called up by an official of the system, and it was pointed out that by reason of insufficient immigration inspections passenger trains were delayed. On taking the matter up with the Immigration Bureau here they stated that they had wherever possible supplied a 24-hour service, but that on account of lack of appropriations it was impossible for them adequately to take care of the very extensive duties of the Immigration Service, indicating that the Government itself through the Immigration Bureau of the Department of Labor recognize that a 24-hour service ought to be performed and paid for by the Government. If I may be permitted, I would like to urge as strongly as possible that it does not seem reasonable that the railroads should be called upon to pay this overtime charge for service rendered by Government employees simply because the Government has not provided appropriations to take care of it.

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98–99 WASHINGTON, D. C.,
February 20, 1922.

Hon. JOSEPH E. RANSDELL,
Committee on Commerce, United States Senate,
Washington, D. C.

DEAR SENATOR RANSDELL: Referring again to the hearing held before the subcommittee of the

Committee on Commerce; January 19, on Senate bills 1504 and 2188, with regard to overtime inspection by immigration and customs inspectors, and to the request made during the course of the statement I submitted to your subcommittee that I furnish the committee with information as to the points on the international border where the Government has provided 24-hour inspection service:

I have today received from the Division of Customs, Treasury Department, the attached letter signed by Mr. J. D. Nevins, assistant chief of that division, and inclosing a list of the ports at which 24-hour customs inspection service is furnished, and which 24-hour service—as explained in note accompanying the list—is divided into three shifts of 8 hours each. It will be observed that there are numerous points where the Government has provided 24-hour customs inspection service. This confirms the general statement that I made to the committee that such 24-hour service had been provided by the Government, and that inasmuch as this had been recognized as a duty of the Government at certain points, it was hardly just or logical to insist that at points where the departments have been unable because of lack of sufficient funds or otherwise to provide 24-hour inspection of shifts that railroads should be required by law to pay for overtime in such cases. Senate bill 1504 provides that overtime inspection and inspection on Sundays and holidays shall be paid by the railroads as new legislation, and Senate bill 2188 is to plainly provide that in the customs inspection service railroads shall be relieved of the payment for overtime customs in-

spection and customs inspection on Sundays and holidays.

The act of 1920, Senate bill 3418, has been construed by the Treasury Department as requiring the payment by the railroads for overtime inspection and inspection on Sundays and holidays; that is, in cases where the department has not provided itself for 24-hour inspection. Senate bill 2188 would amend the existing law so as to clearly provide that this inspection, which is made in the interest of the protection of the revenues of the United States, shall not be charged against the railroad companies.

* * * * *

Yours very truly,

J. H. FISHBACK.

STATEMENT OF MR. RAY M. STANLEY, ATTORNEY FOR DETROIT & WINDSOR FERRY CO., PORT HURON & SARNIA FERRY CO., WALKERVILLE FERRY CO., AND NIAGARA FERRY & TRANSPORTATION CO.

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100 Mr. STANLEY. Yes, sir. Take Buffalo, for instance. The first man comes on at 6 o'clock in the morning. He works eight hours. Number 2 man comes on at 12 o'clock and laps him a couple of hours, so that during the big hours of the day two men are on duty in the customs department; and the last man comes on at 5 o'clock in the afternoon—or 4 o'clock, whichever it is—and that gives him his 8-hour shift by 12 o'clock. There are assigned to that particular station three men. There is, as I say, never any overtime service, viewed from that angle.

Mr. BOND. There is no charge made for any of this service nor is there any overtime service.

There is no overtime service charged against the Port Huron & Sarnia Ferry Co. in week days; that is true, isn't it?

Mr. STANLEY. That is true. I will take up Sundays and holidays a little later.

* * * * *

102 Mr. STANLEY. * * * I note in Mr. Bond's testimony given at the previous hearing that he expressly disclaimed that the men were anxious or desirous of performing overtime service; that they would much prefer performing six days' service a week and have a day of rest, and I commend him for the thought. It is a vicious principle that requires any man to work 7 days in the week, 365 days in the year. A very ready solution of it, so far as the ferries are concerned, can be found in assigning to the ferries, where the demands are the same every day in the year, a sufficient number of men so that no one man would be quired to perform more than six days' service in any one week. That would automatically relieve the situation so far as all the ferry companies are concerned.

At Detroit there is a 24-hour service. There they have the men on three 8-hour shifts, and the other ferry companies could work it out in the same fashion. That would take care of that situation, both as to customs and immigration officers, and it would automatically take care of the overtime. I do not see how the men in that service could then expect double time or double and a half time merely because it is a holiday, for they would then be working their 8-hour shifts six days in the week and they would get their regular day's pay

for each day. That would take care of Sundays and holidays as well as after 5 o'clock at night and before 8 o'clock in the morning.

STATEMENT OF MR. BASIL ROBILLARD, ATTORNEY FOR INTERNATIONAL RAILWAY CO., NIAGARA FALLS, N. Y.

110–111 Mr. ROBILLARD. * * * If you have three men on a 24-hour service, as you have always had in the past, and, if you extend that to the ferry companies, where they have regular schedules, you will give an opportunity for employment in the present situation of unemployment. That will relieve that situation. More than that, you will not require your men to work seven days a week.

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STATEMENT OF MR. WILLIAM E. TUCKER, BOSTON, MASS., REPRESENTING EL PASO ELECTRIC RAILWAY CO.

119 Senator CALDER. Your bridges have a 24-hour service—three 8-hour shifts of inspectors, both customs and immigration.

Mr. TUCKER. I understand so.

Senator CALDER. Of course, you understand that this bill did not contemplate that there should be any overtime charge for night work where there was a 24-hour service—three 8-hour shifts.

Mr. TUCKER. Of course, we are putting ourselves in the same situation as these other bridge companies. The collector is apparently successful, so far as the District Court for the Northern District of New York and the court of appeals is concerned.

Senator CALDER. I understand that only affects the overtime charge for Sundays and holidays.

Mr. ROBILLARD. So far as we are concerned we are only affected by overtime charges for Sundays and holidays; but we have been threatened that it will also affect night overtime. We have been told that we will have to pay the night overtime as well as Sundays and holidays. If he can claim overtime for Sundays and holidays, he can claim overtime for nights just as easily. If he is entitled to one, he is entitled to the other.

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STATEMENT OF MR. WILLIAM H. BOND, BOSTON, MASS., PRESIDENT NATIONAL ASSOCIATION UNITED STATES CUSTOMS INSPECTORS

130 Mr. BOND. I want to say a word in relation to the distinction Senator Calder mentioned during the hearing as between seaport and frontier work. Of course, I am familiar with the purpose of the legislation which is now the law, because I wrote the bill which was originally introduced, and I changed the bill to meet the desires of the subcommittee of the Committee on Commerce of which Senators Ransdell and Calder and President Harding were members. We considered every objection which was made to the terms of the bill, and with the assistance of the chief of the customs division we got a bill that seemed to be all right. To meet the condition at New Orleans, where the hours of labor are from 7 o'clock a. m. to 4 o'clock p. m., this proviso at the end of the bill was put in allowing collectors to adjust the inspectors' hours to the customary working hours at ports where the practices are different. This proviso also applies to the Canadian border at places where traffic is continuous during the 24 hours, such being the "customary

working hours"—and the inspectors work in 8-hour shifts without overtime. The same proviso is in the immigration bill, S. 1504, you will note, as in our law.

Senator RANSDELL. Which bill?

Mr. BOND. The existing law, Senator; the act of February 7, 1920. It is just the same as it is in Senate bill 1504. At the end of the bill it states that the collector is at liberty to arrange the hours of inspectors, not more than eight hours a day, to correspond with the customary working hours; and the department rightfully construed that, although it had special reference to New Orleans, it also applied to border ports, where the customary working hours are from 8 o'clock one morning until 8 o'clock the next morning; where traffic is moving across these magnificent structures at Niagara Falls and through these other places, back and forth, all the time. Consequently, at such places we don't work any more than eight hours. The inspectors along the border are satisfied with that. That is the practice everywhere along the border, wherever it can be done, to make no charge for overtime service during the week days—only for Sundays
132 and holidays. * * * Mr. Stanley has made the statement time after time that these men's work is not overtime until they have completed their regular day's work. We will concede what he has said, but to any man that works six days in the week the seventh day is overtime, according to the gospel or anything else, and he ought to have pay for it when he is working for somebody else's accommodation.

* * * * *

Mr. BOND. * * * Our men along the border work many nights, and, can you imagine, giving the very best of service on many long Sundays and never getting a cent for it at all! None of the railroads found fault that it was unjust to the men. All along the border these poor souls, getting $3.50 and $4 a day, didn't get anything for their overtime, service, but they come in under the law, which was the bill designed by our association, and expect to benefit through it. The principal benefit is at the seaports, because that is where most of the overtime is; but that is no reason the inspectors along the frontier should continue to work overtime for nothing. * * *

134 Two inspectors travel 111 miles from Detroit up to Gault and back, alternate days, working 16 hours every other day. He makes no charge for overtime, as it averages 8 hours a day. At Detroit and Buffalo and these other places where the Government tries to maintain a 24-hour day in furnishing service to the railroads and ferries and to the traveling public, there is no charge made for week-day overtime and I can give the gentlemen every assurance that no such bills as that will ever be rendered against the ferry companies or anybody else as long as the law stands as it is now. All we ask is that it be left as it is now, because the inspectors are satisfied, and these charges are being made as low and reasonable as they can be with justice to the inspectors who have to work under the conditions I have described.

Senator FERNALD. There seems to be no objection either by the railroads or the bridge or ferry companies about the charge that is to be made. That is a detail that can be worked out, I think, by the committee in some bill. But what objection have you to these charges being paid by the Government?

Mr. BOND. That is just exactly what the chairman of the Commerce Committee asked me. The reason I object to that is because I know the department won't pay them. Now, if I go to work at 5 o'clock at night and work until 8 o'clock in the morning, I get $13.12, which is the charge for working all night long. The Government won't pay me $13.12 for working that time. I don't know what they will do, but I know they won't do that because they can't.

Senator FERNALD. So that your real objection is that the Government would economize some in these charges?

* * * * *

136 Senator MCNARY. Do you charge for inspections on ferries?

Mr. BOND. On the seventh day.

Senator MCNARY. Do you charge for the six days?

Mr. BOND. For the six days no charge is made against the ferry companies on this side of the line.

* * * * *

140 Mr. BOND. * * * One of the gentlemen made the remark in answer to Senator Calder's question that they have never had any

trouble before this bill of 1920 passed. Quite right. We had it, not they; we were the goats, not they. We had to furnish this overtime service free. Our men worked 13, 14, and 15 hours a day along the Canadian border without any overtime compensation at all. We were getting it at the seaports on cargo work, but never got it for baggage work. Why, I have worked as late as 11 and 12 o'clock at night, after working all day, on Christmas Day, on Sunday, and so on, without any extra compensation for it. The law which Congress gave us in 1920 was an emancipation proclamation for us which made life worth living. It bears down hard on these poor, downtrodden railroads. It costs them something. Ours was the burden from 1789, when the Government started doing this business, until 1920. Every inspector along the Canadian frontier, it bore down hard on him; it cost him his health; it cost him his comfort and his recreation; it caused him to render service to the traveling public at his expense, to render these accommodations at the cost of his own suffering. I don't know why it isn't fair that the burden should be shifted. They ought to have had it long ago, having had the accommodations. In these cases where it is unavoidable that the men should work beyond eight hours in the week days, and these are comparatively rare, or that they should work on Sundays, and we make that as low as we possibly can, overtime should be paid for.

* * * * *

141 Brief of National Association of United States Customs Inspectors

142 * * * To make the customs officer's day * one of 8 hours, and to include work in connection with passengers' baggage as well as cargo, both reasonable and both having the written assent of the steamship companies and no opposition whatever from any transportation company. Arguments in support thereof need not be here repeated, as the hearings and debate at that time show the purpose and intent of the bill. It is true that the congressional debates refer chiefly to steamship business, but that is a language of convenience and due to the fact that steamship business covers by far the greater part of customs officers' overtime. * * *

145 Much has been said by the railroad representatives about 24-hour service. Under the provisions of the act of February 7, 1920, "that in those ports where customary working hours are other than those hereinabove mentioned, the collector of customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports, but nothing contained in this proviso shall be construed in any manner to affect or alter the length of a working day for customs employees or the overtime pay herein fixed," the Treasury Department has ruled that where railroad, ferry, or bridge traffic is continuous throughout the 24 hours, those are the "customary working hours," and has placed inspectors on duty in 8-hour shifts, and no charge is made against transportation companies for

overtime compensation on week days; the only charge being for Sundays and holidays, days which are universally recognized in all industries to be overtime. * * *

150 PORT HURON, MICH.,
January 31, 1922.

MR. W. H. BOND,
President National Association of Customs Inspectors,
Boston, Mass.

MY DEAR SIR: * * *

We have nine customs inspectors at the Grand Trunk Station, divided into three groups of three men in each group, to take care of the traffic for the 24-hour period. The 24-hour period is divided into 8-hour shifts, handled by three men each, who have to take care of all the incoming and outgoing freight trains, which total 40 trains for the 24-hour period. They also have to examine and pass 9 passenger trains inward and outward during this time. They also have to handle all the express and freight declarations for export during their shift and check in the imports. Therefore we do not think it unreasonable to charge them for the overtime performed on Sundays and holidays, and that is the only charge we make against them, namely, Sundays and holidays. Other industries in Port Huron, when they want their men to work on Sundays, pay them double time; why not the railroads pay when they get the overtime services of the customs officers?

You ask me how much overtime was paid by the Grand Trunk Railway for that particular train they mentioned in their brief for the year 1921.

My answer is, not one cent. We sent them statements of account at the end of each month, but so far those statements have been ignored and never paid. If this law is constitutional, our claims are just and should be paid without any parleying.

Fraternally yours,

JOHN MCCAFFERTY.

* * * * *

5. Hearings before the Committee on Finance, United States Senate (71st Cong., 1st sess.), on H. R. 2667, which became the Tariff Act of 1930. The following excerpts from the Committee hearings relate to a proposal by railway companies that Section 451 of the Tariff Act of 1922 be amended to terminate the liability of railroad companies for overtime, either by abolishing overtime altogether or letting the Government pay it.

STATEMENT OF W. H. BOND, BOSTON, MASS., REPRESENTING THE NATIONAL ASSOCIATION OF CUSTOMS INSPECTORS

481 * * * * *

Section 451 provides the means whereby inspectors of customs and some other customs employees are paid for overtime services which they render beyond eight hours a day. This applies, of course, to all transportation companies, and the railroads seek exemption from those charges, claiming that it is an unnecessary and unjust burden upon them and should be eliminated or that the Government should pay it or that some other remedy should be given to them.

* * * * *

482 Mr. BOND. The ferryboats are now paying overtime only for Sundays and holidays.

They pay no week-day overtime, because in those companies, as I will explain a little later, the men work in 8-hour shifts.

Senator KING. Is that true of Mr. Mills's company at Detroit?

Mr. BOND. It is true of all the ferry companies; yes, sir.

Senator KING. That they are not paid except on Sundays and holidays?

Mr. BOND. That is all.

* * * * *

Senator SHORTRIDGE. If customs inspectors are paid for overtime, why are you concerned as to who pays them?

Mr. BOND. If you will be patient with me, Senator, I will come to that particular point a little later, because I want to elaborate on that just a little bit.

Senator SHORTRIDGE. I do not care to hear you elaborate on it. I just want to know why, if you get paid, you are concerned as to whether the Government pays you directly or whether the railroads pay you indirectly through the Government. Why are you concerned about it?

Mr. BOND. Because there is a double purpose about overtime. One is to compensate the customs officers for their overtime and the other is to act as a deterrent upon overtime; and I will explain in what manner they base that. If this deterrent legislation were not on the statute books the overtime which it would be necessary for the inspectors and others to work would probably be three or four times what it is now.

* * * * *

485–486 In 1871 Congress appointed a special committee to investigate the matter of customs overtime because the vessels had been desirous of working during overtime periods in getting out their cargoes, and they made private arrangements with the inspectors. They would say to an inspector, "We would like to work tonight. Will you look after us all right?" And the inspector would say, "Yes. It will cost you $10" or $20 or $50; or whatever money he happened to be in need of at that time, I presume he told them he wanted. But there was nothing regular about it. They paid him direct.

In any large body of men you will find some who will take advantage of opportunities for irregularity. It was desirable that that should be done away with.

This committee reported in 1872 or 1873. The resultant act was passed in 1873, which was the first overtime act and provided for the payment of this overtime by vessel owners to the collector under established regular rates and to be paid by him to the inspectors.

* * * * *

487 * * * Most of the overtime is on freight service, which is certainly decidedly irregular, as everybody knows. But even at that, in some of these places continuous service is important in freight service, such as at Detroit and Buffalo and other places of that nature where business is continually going on all the time. These men work in 8-hour shifts, three shifts during the 24 hours, and no overtime in-

such circumstances as that is charged against the railroad companies.

* * * * *

494 That was intended to apply to the port of New Orleans, to correct the situation which would prevail there if our language went through. But when this thing went into effect it was readily found that we were up against a peculiar situation on the Canadian frontier which we did not foresee; and the department construed, and we assented to it, that this should be applied to the Canadian frontier; that the department was at liberty to construe the usual working hours at a port like Detroit as 24 hours a day. Consequently, they could put these men on in three 8-hour shifts without violating this provision. That would make necessary the payment only where a man had to work seven days a week; he would be paid for that extra day; but during the 24 hours of any weekday it would be unnecessary to pay him anything, because a sensible and liberal interpretation of that clause, primarily intended for New Orleans, could easily be applied there.

Under the present law, with that proviso in it, all the free accommodation which is practicable and desirable can be given to the railroads on one condition, and that is that you gentlemen, the Congress of the United States, will give the department, the Bureau of Customs, an appropriation large enough so that they can hire the men necessary to put on these extra shifts of men. If you do not do that, of course they can not do it.

* * * * *

497 Senator SACKETT. If the Government were going to pay overtime in place of these railroads, would it be cheaper to put on separate shifts in the customs service?

Mr. BOND. Do you mean on the frontier?

Senator SACKETT. No; generally.

Mr. BOND. You could not do it at the seaports. It would be impossible, because you would have hundreds of men who would be on duty with absolutely nothing to do; and not only that, but the men working in the daytime can not turn over their work to other inspectors at night.

Senator SACKETT. Then take it at the frontier.

Mr. BOND. At the frontier there are some situations where it can be worked in three 8-hour shifts; and in those situations it is worked at the present time in three 8-hour shifts where the department has money to put those men on.

* * * * *

499-500 I have reported to the pier at 7 o'clock in the morning and waited all day at the pier, unable to go away even for lunch, because a fog kept the ship down the harbor, and we did not know when it was coming in. It might come in within 10 minutes; it might be at the end of the pier, and we could not see it, and would not know anything about it. I worked there one Christmas day from 7 o'clock in the morning until half-past 11 at night. After making an engagement to be at home with my family in the afternoon, I worked there all that day. It was the result of that day's work that caused me to sit down at my desk and write the terms of the Act of 1920. I was so filled with disgust and indig-

nation that I was impelled to do something to help the inspectors who were suffering every day and every night as I was doing.

* * * * *

Senator BINGHAM. Is there not a law that forbids them to work more than eight hours a day?

Mr. BOND. No, sir. An inspector of customs and any other customs employee is on duty 24 hours a day, except as provided by laws such as our overtime law. I work many Sundays that I do not get any compensation for, because it is in the interest of the Government. There are six of us station inspectors at the port of Boston. Every sixth Sunday one of us has charge of the port. We do not get any compensation. It is in nobody's interest but the Government's. We do not get any extra pay for that. We do that every sixth Sunday. There are many other cases where the discharging inspectors—not station inspectors—have to work, because on Sundays work is generally suspended, and places have to be covered by inspectors who get nothing for it. We are on duty whenever we are wanted.

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STATEMENT OF STUART K. BRANDON, OF NEW YORK CITY, REPRESENTING THE NATIONAL CUSTOMS SERVICE ASSOCIATION

* * * * *

Mr. BRANDON. That act was carried right on; so that the only provision now, Senator, for the payment of overtime is the provision which provides that these vehicles must obtain a special license, and in order to do that they must pay the compensation of the Customs Service men

for the required services; and the customs men's pay is not on a per diem basis, but it is upon an annual basis. Now then, the collectors of customs being on an annual basis, they can—and I will not take the time to read numerous letters here—they can, if requirements make it necessary, make them work seven days a week, and all kinds of hours.

The vast majority of that overtime work would come about by reason of those special services rendered to those vehicles. There are some conditions that we cannot remedy now. We are unable to suggest how to remedy them.

Senator SHORTRIDGE. But they get paid for the overtime; do they not?

Mr. BRANDON. They get paid for it by the railroads now.

Senator SHORTRIDGE. I merely want to know how the inspectors are treated.

Mr. BRANDON. If the railroads do not pay them, no one can pay them.

We have a condition that we cannot remedy now. Take the men up on the Maine border, where there are roads and automobiles, etc., coming in all the time. These men work all kinds of hours, and there is no provision in the law to compensate them for that overtime. All they get is their salary.

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STATEMENT OF A. P. THOM, WASHINGTON, D. C., REPRESENTING THE ASSOCIATION OF RAILWAY EXECUTIVES

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599 The customs laws were framed when the business of the country was conducted during daylight hours, but the commerce of the coun-

try is now on a 24-hour basis. Inspection is necessary to protect the revenues of the United States by preventing smuggling. In all fairness and justice, a particular interest such as the railroads should not be asked to bear a financial burden for service that is not of interest to them or that they can not control, but is of direct interest to and for the protection of the citizens of the United States at large. The cost should be met through the means of general taxation in the same manner as funds are raised for the proper conduct of all other departments of the Government.

9. This subject has been presented to the Secretary of the Treasury in substantially the same form as that presented in this memorandum. In response to this submission, Hon. A. W. Mellon, Secretary of the Treasury, under date of January 4, 1927, addressed a letter to Mr. G. F. Snyder, legal representative of a number of the railroads involved, a copy of which is hereto attached, which concluded with the following paragraph:

> Considering the general Government policy that private interests should not pay for governmental services and also considering the modern conditions in connection with the movement of railroad passenger and freight trains at night I am of the opinion that the Customs Service should be in a position to furnish 24-hour service, including such service on Sundays and holidays, to the railroads crossing the international borders and that the railroads should not be compelled to pay for the services so rendered by the Government employees.

516 STATEMENT OF WILSON W. MILLS, DETROIT, MICH., REPRESENTING THE DETROIT AND WINDSOR FERRY CO.

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518-519 DETROIT, *July 20, 1929.*

Hon. REED SMOOT,
Senate Committee on Finance,
Senate Building, Washington, D. C.

DEAR SENATOR SMOOT: Will you be good enough to consider this letter and make it a part of the record of the hearings of the Senate Committee on Finance regarding customs overtime. I may still be considered as being under oath.

I understand it was stated to the committee that no amendment was needed to the present customs overtime act and that the commissioner only needed additional appropriation to render 24-hour service so that the ferry carrier would not bear any portion of the cost thereof. This statement in and of itself is probably correct but there are two practical matters to be considered: First, we have been endeavoring to have the Commissioner of Customs take care of this matter of overtime since 1924. He has taken care of it as to week days but it has not been taken care of as to Sundays and holidays. If it were done by an appropriation, an appropriation would be necessary every two years—why not cover it in the act itself and put the burden of paying overtime where, in my opinion, it belongs, directly upon the Government and not upon the 24-hour carrier. I think the theory of putting the charge on the carrier, even if by administrative order and by appropriation, the actual cost is borne by the Government, is wrong because as was said at the hearings, the

railroads, ferry, bridge, and tunnel companies are rendering 24-hour service and the cost for that should be placed directly where it belongs, that is, upon the Government.

Yours respectfully,

WILSON W. MILLS.

6. Hearings before the Committee on Immigration, United States Senate (71st Cong., 3d sess.), on S. 1126 and H. R. 3309, bills to provide for immigration inspectors overtime compensation similar to that provided by the 1911 Act as amended

STATEMENT OF GEORGE E. TOLMAN, COUNSEL AND WASHINGTON REPRESENTATIVE OF UNITED STATES IMMIGRATION INSPECTORS ASSOCIATION, MILLS BUILDING, WASHINGTON, D. C.

* * * * *

Senator KING. This bill, as I understand it—and I do not know that I do—seems to indicate that no one works at night; that all inspectors are inspectors calling for day labor. Do they not call for night labor, or from 2 o'clock in the afternoon for eight hours until the evening, without getting overtime after 5 o'clock?

Mr. TOLMAN. The customs officers could, of course, testify with more authority than I about the customs provisions, but as you will see in the text of the bill we have exactly copied the provisions extending to the customs, which provides overtime. Overtime in that law, as it has been enforced for the last decade, means duties performed after 5 o'clock in the afternoon and before 8 o'clock in the morning.

Senator KING. Why should not the employees in the Government service work after 5 o'clock?

Why should not the beginning of their service, for instance, commence at 2 o'clock instead of 8 o'clock in the morning?

Mr. TOLMAN. Correct.

Senator KING. You take it in the mines, they have the night shift and day shift; sometimes they have three shifts.

Mr. TOLMAN. That provision is taken care of in this way, Senator, where the men work in shifts, he does not have overtime.

Senator KING. Where a man works in shifts, he does not have overtime or overpay. Many prefer the night shift to day shift?

Mr. TOLMAN. That is right.

Senator KING. I am not saying now that the night shift ought not to call for larger compensation, but I am wondering why it is that these bills all presuppose there is only a day shift, commencing in the morning and terminating at 5 o'clock.

Mr. TOLMAN. There is no desire on the part of immigration officers to be paid overtime for the particular hours in the 24 in which they work—that is, as regards other hours in the 24. That situation is taken care of in these words in the bill:

> In those ports where the customary working hours are other than those heretofore mentioned, the Secretary of Labor is vested with authority to regulate the hours of immigration employees so as to agree with the prevailing working hours in said ports, but nothing contained in this section shall be construed in any manner to affect or alter the length of a working day for immigration employees or the overtime pay herein fixed.

Senator KING. Then you are contending for this two and a half times ordinary pay for an hour's work?

Mr. TOLMAN. Not at all. Simply because the work is a certain hour of the 24, the law would not be administered in a way to call for overtime, as you can verify by calling in Assistant Commissioner Dow, of the Customs Bureau, or others, who will inform you on that condition.

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STATEMENT OF JOHN W. VAN ALLEN, BUFFALO, N. Y.

28 Mr. VAN ALLEN. I am here particularly on behalf of the Peace Bridge at Buffalo, and I just want to supplement what Mr. Scott said.

* * * * * *

31 Senator JOHNSON. Mr. Van Allen, in order that I may understand the purport of what you say: The customs officials there maintain three shifts of eight hours each, 24 hours a day?

Mr. VAN ALLEN. Yes, sir.

Senator JOHNSON. They put no additional burden upon you?

Mr. VAN ALLEN. No, sir.

Senator JOHNSON. What are the shifts maintained by the immigration service?

Mr. VAN ALLEN. The same.

Senator JOHNSON. The shifts of eight hours each?

Mr. VAN ALLEN. Yes, sir.

Senator JOHNSON. Just the same?

Mr. VAN ALLEN. That is right.

Senator REED. They would not get any overtime, Senator.

Senator JOHNSON. Then, I do not understand the purport of the testimony.

Mr. VAN ALLEN. There is a bill in the Senate introduced by Senator Reed, and a House bill introduced by Mr. Jenkins, which provides additional compensation for certain hours when they work overtime, which happens usually to be charged back to the transportation companies. As amended in the House that does not apply to the border bridges or border railroads or airplanes or any passage by air on land.

Senator REED. But if there are three shifts there would not be any overtime.

Senator JOHNSON. That is the thing that impresses me.

7. Hearings before the Committee on Ways and Means, House of Representatives (75th Cong., 1st sess.), on H. R. 6738 (one of the bills which became the Customs Administration Act of 1938, amending Section 451 of the Tariff Act of 1930 (Act of June 25, 1938, c. 679, § 9, 52 Stat. 1082))

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35 SYNOPSIS OF PROPOSED CUSTOMS ADMINISTRATION ACT OF 1937 (H. R. 6738)

* * * * *

SECTION 8

Provides for payment of overtime compensation in all cases where customs employees perform services outside regular hours of business, the expense to be borne by the person requesting such services. Such compensation is now authorized in most, but not all, cases.

STATEMENTS OF CLINTON M. HESTER, ASSISTANT GENERAL COUNSEL; WILLIAM R. JOHNSON, CHIEF COUNSEL, BUREAU OF CUSTOMS; AND STEPHEN J. SPINGARN, OFFICE OF GENERAL COUNSEL, TREASURY DEPARTMENT—Resumed

Mr. HESTER. We have covered section 9. Section 8 is on page 10 of the bill.

At the present time the Treasury Department has regular shifts on duty on nights, Sundays, and holidays at some ports of entry in the United States.

At ports of entry where we do not have regular shifts on Sundays, holidays, and nights the law authorizes the owner or operator of vessels or vehicles to requisition the services of customs employees for the purpose of supervising the unlading and lading of merchandise, baggage, and passengers, for the entering and clearance of vessels and vehicles, and for the issuing and recording of ship's documents, such as bills of sale.

Mr. DINGELL. With or without pay?

Mr. HESTER. With overtime pay.

Mr. DINGELL. Paid by the carrier?

Mr. HESTER. To be paid by the carrier.

It also frequently happens that exporters and importers desire the services of customs employees at these ports outside regular office hours for the purpose of segregating merchandise or manipulating merchandise.

It also happens outside regular hours that merchandise leaves the country or comes into the country otherwise than by a vessel, or by a vehicle, such as by driving cattle across the border.

The purpose of this amendment is to broaden the law, to permit exporters and importers and

persons who bring merchandise into the United States otherwise than by a vessel or vehicle to requisition the services of customs employees.

* * * * *

88 Mr. JOHNSON. There are certain situations at the present time where customs facilities are furnished outside of regular hours of business under circumstances in which the employees must work without any extra compensation. This will remedy that situation by providing that the person for whose benefit the services are performed must stand the cost at the rate provided in the Overtime Act.

Mr. MCCORMACK. Under the Overtime Act, the overtime is payable only to certain classes of employees, is it?

Mr. JOHNSON. The Overtime Act applies to all classes of customs officers who work overtime, but not to all cases in which services may be furnished.

* * * * *

89 Mr. MCCORMACK. Take the Detroit situation. When the men work overtime on the ferries, do they get overtime pay?

Mr. JOHNSON. I do not believe there is any overtime work on the ferries.

Mr. MCCORMACK. They get compensatory time?

Mr. JOHNSON. Yes, sir.

Mr. MCCORMACK. Do they not get overtime under the provisions of this law, that is, the men who work on the ferries?

Mr. JOHNSON. No, sir; not under the present arrangement since there is a 24-hour service there.

* * * * *

92 Mr. McCORMACK. Is there any type of overtime work that these men do under existing law that they do not get paid overtime for?

Mr. JOHNSON. At the present time there are overtime services performed without compensation——

Mr. McCORMACK (interposing). Is this paragraph not aimed to meet that situation?

Mr. JOHNSON. Yes, sir.

Mr. McCORMACK. In other words, the purpose of this paragraph is to see that the employees working overtime, insofar as it is practically possible, receive pay for all of that work that they do?

Mr. JOHNSON. Yes, sir.

Mr. McCORMACK. It is also intended that all these employees doing overtime work receive overtime pay?

Mr. JOHNSON. That is so where such services are for the benefit of an individual rather than for the public generally.

Mr. McCORMACK. Naturally, the Government does not pay for that, but it is the individual benefited who pays for it?

Mr. JOHNSON. Under the present law, there are cases where the individual does not bear the burden. It is true that there is no extra compensation to be paid by the Government, but the employee bears the burden; he does the work without getting paid for it. That is true, for example, in the case we cited of the movement of cattle.

* * * * *

Mr. McCORMACK. As I understand you, the lines on page 10, from line 23 on page 10 to line 2 on page 11, are unnecessary?

Mr. JOHNSON. We would have to consider that. It was drafted with the thought of completing a whole idea and avoiding in the new law any conflict with the platoon system. That is, there are certain services performed outside of regular office hours but on regular tours of duty for the benefit of the general public for which no overtime is or should be paid. The situation there is a familiar one in many industries which operate 24 hours a day.

Mr. McCORMACK. The men in Detroit work on the 3-platoon system?

Mr. JOHNSON. Yes.

Mr. McCORMACK. That system does not apply in ports like New York and Boston?

Mr. JOHNSON. Only with respect to certain classes of employees, such as guards.

Mr. McCORMACK. And the reason for the three-platoon system is because of the location of that particular port?

Mr. JOHNSON. That is true. There is a large population concentrated on each side of the border and a concentration of heavy traffic.

Mr. McCORMACK. With many thousand of persons coming across daily from Canada into the United States, being employed in the United States?

Mr. JOHNSON. There is heavy traffic at all hours.

Mr. McCORMACK. I wish you would look into the conditions as to rotating on Sunday work.

Mr. JOHNSON. I shall be very glad to do that.

Mr. McCORMACK. Mr. Dingell and I have talked that over a number of times.

Mr. JOHNSON. I am under the impression that there is some rotation system, but I shall check on that.

130 "DETAILED SECTION-BY-SECTION ANALYSIS OF H. R. 4675 SUBMITTED BY THE TREASURY DEPARTMENT.

* * * * * *

132 SECTION 8. Section 451 of the Tariff Act of 1930 (U. S. C., 1934 ed., title 19, sec. 1451) authorizes the assignment of customs officers and employees to overtime duty, and the payment of such overtime by the requesting master, owner, or agent only in connection with the unlading or lading under special license of merchandise, baggage, or passengers, the entering or clearing of a vessel or the issuing and recording of its marine documents, bills of sale, mortgages, or other instruments of title.

Merchandise, baggage, and persons may arrive otherwise than by vessel or vehicle, as in the case of livestock driven into the country. Moreover, overtime customs services are sometimes requested for the benefit of importers or exporters in connection with the segregation or manipulation of merchandise and in various other circumstances not included in the above enumeration. At ports and stations where the volume of business does not justify the employment of extra shifts of personnel to serve the public, these requests cannot be granted at the present
133 time without requiring customs officers and employees to work overtime without com-

pensation. The proposed amendment of the law is therefore deemed desirable to eliminate present inequities by uniformly requiring the payment of overtime compensation for all overtime services performed on special request and for the benefit of particular importers, exporters, or carriers. This requirement will not be applicable, of course, when there is a regular shift on duty.

180, 181 STATEMENT OF ELI FRANK, JR., BALTIMORE, MD., REPRESENTING NATIONAL CUSTOMS SERVICE ASSOCIATION

Mr. FRANK. Mr. Chairman, my name is Eli Frank, Jr., my address is 111 North Charles Street, Baltimore, Md., and I am representing the National Customs Service Association.

* * * * *

Section 8 appears on page 10 of the bill and on page 15 of the comparative print.

The intent of section 8 apparently is twofold: First, to extend the provisions of the Customs Overtime Act to cover cases where customs employees are required to perform services at night, or on Sundays or holidays not specifically covered by the existing overtime law, but which are for the benefit and profit of private interests. Second, to clarify the existing law so as definitely to present a statutory basis for the present administrative practice of not requiring payment of overtime compensation to customs officers at border ports, who are working in shifts, and who therefore work a full week, but at other than regular hours, and who do not at present participate in overtime compensation.

In its present form, section 8 will not effectuate the desired result. For this reason, the following changes are respectfully suggested:

First, strike out lines 23, 24, and 25 on page 10, and lines 1 and 2 on page 11.

The language of this proposed amendment to section 451 of the Tariff Act of 1930 is such that it might eliminate payment by private interests of overtime compensation for services performed at their request and for their pecuniary benefit by customs officers and employees at other than regular hours.

* * * * *

183 Also, we want to add at the end of section 8 these words:

and such section 451 is further amended by adding at the end thereof the following:

"The authority to regulate hours now vested in the collectors of customs by the last proviso of section 5 of the act of February 13, 1911, as amended, shall not include the authority to make assignments to regular duty on Sundays or holidays, either by day or at night, in compliance with such requests, in the place of assignments to regular duty on other days or nights."

* * * * *

The authority to regulate hours to conform to customary private working hours of the port; if other than from 8 a. m. to 5 p. m. was placed in the act of February 7, 1920, which was in the nature of an amendment to the act of February 13, 1911. This proviso was placed in the act for the purpose of giving to the Collector of Customs at New Orleans the authority to regulate the working hours of customs officers to agree with the prevail-

ing hours of working vessels of 7 a. m. to 4 p. m. at that port, and for no other reason. That is referred to in the hearings before the Committee on Commerce, United States Senate, Sixty-seventh Congress, entitled "Overtime Pay of Customs and Immigration Employees," on page 17,

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185 STATEMENT OF R. R. BOYNTON, REPRESENTING NATIONAL CUSTOMS SERVICE ASSOCIATION

Mr. BOYNTON. Mr. Chairman, my name is R. R. Boynton; I am representing the National Customs Service Association.

* * * * * *

What I would like to make very clear to the committee, if it is possible to do so, is this. We do not desire to have to work on Sundays or holidays.

We feel in the service that even on the border there are many instances where service is requested that is avoidable.

Your honorable body, in the act of 1920, section 5 of that act, which amended the act of February 13, 1911, provided for overtime, plus a limitation upon regulation of hours by collectors of

186 customs, according to the last six words in the last proviso of section 5 of the act of 1911, as amended by the act of February 7, 1920.

Those last six words, after reciting that the collectors were vested with authority to regulate hours to conform to the customary working hours of the force, covered the situation existing at New Orleans, where the usual hours are from 7 o'clock a. m. until 4 o'clock p. m. That act of 1920 was our emancipation proclamation. That fixes our

hours from 8 o'clock a. m. to 5 o'clock p. m., with an 8-hour day. We had never had that before.

While the department had construed the sunrise to sunset bill to mean from 7 o'clock a. m. to 6 o'clock p. m., we had usually been required to work a 10-hour day. The act of 1920 gave us an 8-hour day. But at New Orleans they have been working from 7 o'clock a. m. to 4 o'clock p. m., and not from 8 o'clock a. m. to 5 o'clock p. m. And in order not to penalize either the dock employees or the other people at New Orleans, or the customs officers, and force them to work over hours before or after the regular hours, that provision was placed in the law. After reciting that the collectors of customs were vested with authority to regulate hours, Congress placed a limitation in the law to the effect that in such regulation of hours the length of the working day would not be altered, or the overtime pay herein fixed.

On the border they work 24 hours a day in a good many cases. We have no quarrel with that. There is a certain amount of consideration that has to be given to public business.

But we do not want to work on Sundays.

* * * * * *

188–189 Mr. DINGELL. By ruling of the Treasury Department, the ferry company was given special classification, which these employees contend has never been authorized by Congress, but that ruling of the Treasury Department was made for the ferryboats because there was competition between the ferry company and the international bridge, and the contention is, or rather the Treasury Department said the ferry company could not stand the competition, and therefore we will ex-

empt them from paying that added service cost. But so far as these people are concerned, if an employee is called upon to make an examination, they have no objection to that, but they do not want compensatory time off; they want to be paid overtime. Time off on Friday for service rendered on the previous Sunday is mighty poor compensation.

Mr. REED. Why should they not be paid overtime?

Mr. DINGELL. When they are paid overtime that amount should be reimbursable to the Government from the coffers of the steamship company.

Mr. REED. Why is not that fair?

Mr. BOYNTON. It is.

Mr. DINGELL. It is absolutely fair.

Mr. BOYNTON. Principally that was because there was not enough law. We cannot blame Congress, but there was not enough law to cover the competition that the ferries were facing. The bridge and tunnel were not covered by the law, and being so ruled by the courts, the ferry companies were brought down to the level of the bridges and tunnels rather than having the bridges and tunnels being required to reimburse the Government for that service. We would like to see that provided for in your measure.

8. Congressional debates on the proposed Customs Administration Act of 1938, amending the Tariff Act of 1930

IN THE HOUSE

81 Cong. Rec.

9391. Mr. ANDREWS. Mr. Speaker, the provisions of section 8 of this act in amendment

of section 451 of the Tariff Act of 1930 would permit the Treasury Department or the Bureau of Customs, should it so desire, to charge overtime at all international bridges, both public and private, to the bridge companies themselves. This would affect the bridges at Brownsville, El Paso, Detroit, Buffalo, Niagara Falls, and in the St. Lawrence region. This situation was brought to the attention of Members of Congress thus involved. We have no fault to find with the bill because we were assured by the gentleman in charge of this bill, Mr. Cullen, and the gentleman from Massachusetts [Mr. McCormack] and also by representatives of the Treasury Department that there is no intent on the part of the Treasury Department to interfere with the present method of handling matters at the bridges.

Mr. CULLEN. May I say to the gentleman that his statement is absolutely true. This will cure that defect.

Mr. ANDREWS. For the purpose of making it a matter of record, I understand these gentlemen will favor an amendment by the Senate, and those concerned have drawn an amendment to the bill which would come in at the end of section 8 after the words "public interests" and which will correct the situation.

* * * * * *

Mr. ANDREWS. Copy of amendment to section 8 of H. R. 8099 as proposed and agreed upon:

> At the end of section 8, after the words "public interest," insert the following: "or to authorize the collection of overtime compensation for services of a kind which were

being regularly performed by customs officers or employees assigned to regular tours of duty at nights or on Sundays or holidays in connection with international traffic over ferries or highway bridges or through highway tunnels on July 1, 1937, and which shall hereafter be performed in connection with such traffic."

* * * * *

Mr. ANDREWS. * * * If the proposed amendment to section 451 of the Tariff Act of 1930 shall become a law the Treasury Department may impose upon international bridges the obligation to pay overtime of customs employees. For proper consideration of the proposed amendment it is essential to consider section 5 of the act entitled "An act to provide for the lading or unlading of vessels at night, the preliminary entry of vessels, and for other purposes," approved February 13, 1911, as amended, which is referred to in section 451, is as follows:

* * * * *

9392 Under section 451 as now constituted an obligation to give a bond to pay the compensation and expenses of customs officers and employees assigned to duty at night or on Sunday or a holiday is limited to the master, owner, or agent of any vessel or vehicle. Under the proposed amendment the obligation is imposed upon the owner, master, or person in charge of a vessel or vehicle, common carrier, or consignee of any merchandise or baggage. The operator of a toll bridge has been held to be a common carrier.

When the act of February 13, 1911—section 5 above quoted—was amended on February 11, 1920, to enlarge the provisions to relate to the examina-

tion of passengers' baggage, the collector of customs threatened to close the bridges of the International Co. spanning the Niagara River between the United States and Canada unless the company would give a bond in the sum of $500,000 and agree to pay at double-time rate the salaries of the inspectors stationed at the bridges after 5 o'clock at night and before 8 o'clock in the morning and at any time on a Sunday or holiday. From this arose the injunction action brought by the International Co. against Davidson as collector of customs.

The Supreme Court of the United States in that case held that the words "vessel or other conveyance" in section 5 of the act of 1911 as amended by the act of 1920 were inappropriate to describe the plant of a toll bridge; that it was not the purpose of Congress to make it applicable to the conduct of a toll bridge or the operation thereon of a line of passenger trolley cars.

The proposed amendment to section 451 to include common carriers might be construed as adequate to describe the plant and operation of a toll bridge. The so-called saving clause proposed to be enacted as the last sentence of section 451, reading as follows:

> Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign customs officers or employees to regular tours of duty at night or Sunday or holidays when such assignments are in the public interest—

imposes no duty upon the Treasury Department to assign customs officers or employees to regular

tours of duty at night or on Sundays or holidays. The sentence merely clarifies the intention to preserve the existing authority of the Treasury Department to make such assignments if it wills to do so. If the Treasury Department decides not to assign customs officers or employees to regular tours of duty after 5 p. m. and before 8 a. m. or on Sundays or holidays, and the operator of a bridge between the United States and Canada or between the United States and Mexico desires to keep the bridge open, as it obviously would, on Sundays and holidays and during some part of if not all of the night, it could be required to give a bond by the terms of which it would agree to pay the compensation and expenses of customs officers and employees assigned to duty at the periods mentioned.

The amendment to the last sentence of section 451 of the Tariff Act of 1930 suggested above would preserve the rights of bridge companies as determined by the Supreme Court of the United States (*International Co.* v. *Davidson*, 257 U. S. 560) and remove the option to the Treasury Department by change of policy or personnel to curtail regular tours of duty for the purpose of collecting additional compensation where it would be in the public interest not to curtail customs service, and it would also make this law conform to immigration laws.

Mr. McCORMACK. Mr. Speaker, will the gentleman yield?

Mr. ANDREWS. I am glad to yield to the gentleman from Massachusetts.

Mr. McCORMACK. May I say that the gentleman from New York, Mr. Andrews; the gentle-

man from New York, Mr. Reed; and the gentleman from New York, Mr. Mead, representing constitutents of theirs in connection with the international bridge, had a conference with the gentleman from New York [Mr. Cullen], another member of the Committee on Ways and Means, and me. The Treasury Department never intended to disturb the situation which exists at the international bridge or at Detroit at the present time, and certainly this was not the intention of the committee.

May I compliment the three gentlemen from New York on so zealously fighting for an amendment which will definitely clinch the matter.—I hope their constitutents will remember it at the right time.

9. Hearings before a subcommittee of the Committee on Finance, United States Senate (75th Cong., 3d sess.), on H. R. 8099 (one of the bills which became the Customs Administration Act of 1938, amending the Tariff Act of 1930)

STATEMENT OF STEPHEN J. SPINGARN, ATTORNEY, OFFICE OF THE GENERAL COUNSEL, TREASURY DEPARTMENT

* * * * * *

Mr. SPINGARN. The next section I would not classify as controversial, but because there has been a good deal of interest in it, I think it worth calling to the special attention of the subcommittee. That is section 8.

* * * * * *

In other words, existing law specifically enumerates circumstances in which private par-

ties can request and pay for the services of customs employees for overtime purposes, such as, for example, when a vessel comes in to a port at some time after the customhouse at that port is closed at night or on Sunday. But because it specifically enumerates the circumstances, the type of cases in which persons may request these overtime services is restricted and excludes various other types of circumstances in which the furnishing of overtime services is believed to be desirable. This amendment will permit the furnishing of such services to, and the payment for them by, importers, exporters, and others who need overtime services of customs employees in all cases where they request such overtime services.

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20 STATEMENT OF JOHN W. VAN ALLEN, BUFFALO, N. Y., REPRESENTING THE BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

* * * * *

21 Mr. VAN ALLEN. * * * Shall I read the amendment?

Senator WALSH. I wish you would.

Mr. VAN ALLEN [reading]:

> At the end of section 8, after the words "public interest," insert the following:
>
> "Or to authorize the collection of overtime compensation for services of a kind which were being regularly performed by customs officers or employees assigned to regular tours of duty at nights or on Sundays or holidays in connection with international traffic over ferries or highway bridges or through highway tunnels on July 1, 1937, and which shall hereafter be performed in connection with such traffic." * * *

Mr. VAN ALLEN. Yes. As the law exists today they cannot charge the bridge companies for overtime services on international bridges because in the preceding act it refers only to vessels, merchandise, baggage, passengers, and so forth, but it does not refer to bridges.

Senator WALSH. In other words, the present act refers to rail terminals and water terminals?

Mr. VAN ALLEN. Yes, sir. So that at the present time the Treasury Department has no discretion under which they may impose these charges upon international bridges for overtime services. Now, if this bill goes through, in our view of the situation, it does give the Treasury Department discretion to impose this charge for extra-time service on international bridges.

Now, the Treasury Department has said that they have no intention of charging it even though the discretion may be there. Nevertheless, in 1921 the Treasury Department thought they had that discretion and attempted to impose that charge, and hence this litigation which resulted in a decision that they could not as the law existed, but as it is reinstated now, we feel that they would have discretionary power to charge for this extra time service. The purpose of the amendment is to clarify that situation so that that discretion is not left with the Treasury Department.

Senator VANDENBERG. What is the fact? Is there a great deal of overtime service on these bridges?

Mr. VAN ALLEN. Most of the bridges run 24 hours.

Senator VANDENBERG. And there is overtime?

Mr. VAN ALLEN. Yes. That is, there are three shifts of 8 hours each.

Senator VANDENBERG. That is not overtime if they work in shifts.

Mr. VAN ALLEN. I mean this act would give the Treasury Department discretion, as we think, to charge for everything excepting an 8-hour day shift.

Senator WALSH. It would permit the Treasury Department to take a shift that ran for 8 hours in the day and continue it on into the night and charge for overtime?

Mr. VAN ALLEN. That is right, sir.

Senator WALSH. Is this amendment favored by the customs officials on these international bridges?

Mr. VAN ALLEN. By the customs officials?

* * * * * *

Mr. VAN ALLEN. * * * Now, the Treasury Department says it has no intention of exercising such a discretion. Well, in 1922, under the preceding administration, the Treasury Department attempted to do that very thing, and we do not want to take any chances. We are perfectly satisfied that this present Treasury Department does not have any intention of using its discretion, but changes take place in Washington now and then.

Senator WALSH. You think the present law gives the Treasury Department that discretion?

Mr. VAN ALLEN. I think the new bill gives the Treasury Department discretion.

Senator WALSH. Not the present law?

Mr. VAN ALLEN. Not the present law.

Senator WALSH. You are objecting to this new bill having such broad language as to give that discretion?

Mr. VAN ALLEN. Yes.

Senator WALSH. You want that discretion eliminated and the present law to stand?

Mr. VAN ALLEN. By the adoption of this amendment.

Senator WALSH. Which will make it clear that they have no discretion?

Mr. VAN ALLEN. Yes; the members of the Ways and Means Committee, Mr. Cullen and the others, also felt that if this bill did give discretion to the Treasury Department it ought to be limited.

Senator WALSH. Does the Treasury Department have any opinion on this proposal?

Mr. SEINGARN. I do not think the Treasury Department will have any objection, in principle, to the amendment. We would like an opportunity to comment on the specific language.

Senator WALSH. Very well.

Mr. SEINGARN. We will make a report to you on that, just as in the case of the Ways and Means Committee.

Senator VANDENBERG. I should like to ask as to the effect on the customs employees. At the present time, even though they work in shifts, are there occasions when they do have to work overtime?

Mr. VAN ALLEN. No, there is no occasion when they have to work overtime. There are times when they are very accommodating and come back, when the traffic is particularly heavy, but they do that as a courtesy to the public.

59 STATEMENT OF ELI FRANK, JR., BALTIMORE, MD., REPRESENTING THE NATIONAL CUSTOMS SERVICE ASSOCIATION

Mr. FRANK. * * * It is clear that
60-61 the Treasury Department proposed only that section 8 extend the provisions of the overtime law to all overtime services performed on special request. At the time that H. R. 6738, the predecessor bill, was being considered by the Committee on Ways and Means of the House of Representatives, the National Customs Service Association proposed the following amendment at the end of section 8 of H. R. 6738, by adding the following to the end of section 451 of the Tariff Act of 1930:

> The authority to regulate hours now vested in the collector of customs by the last proviso of section 5 of the act of February 13, 1911, as amended shall not include the authority to make assignments for regular duty on Sundays or holidays, either by day or at night, in compliance with such requests in the place of assignments to regular duty on other days or nights.

The reasoning behind this proposed change was in substance as follows: No man wishes to work on Sundays or holidays if such service can be avoided. Sundays and holidays are the days when children are at home and families gather. Church going means as much to many customs employees as it does to many other citizens of our country. Consequently, no day in the week can compensate a man for time away from home on Sundays or holidays. It should be noted at this point that the amendment proposed by the National Customs Service Association sought not to compel the pay-

ment of overtime for night work, nor the abolition of the platoon system, but merely the privilege to employees to spend Sundays and holidays with their families, a privilege that most of our citizens now enjoy and jealously guard. If the employees' services should be necessary for the operation of a toll bridge on Sunday, it seemed only just that the employee be reimbursed for his service, which is, in the final analysis, for the benefit of private commercial interests.

At the time when this amendment was being considered by the Ways and Means Committee of the House, the National Customs Service Association was informed that this amendment granting the employee the right to spend his Sundays and holidays at home, involved a change in the law, since it impaired the authority of the Treasury Department to assign officers on regular tours of duty on Sundays or holidays. In order to make certain that such authority in the Department was to remain unimpaired, the last sentence of the present section 8 was inserted as follows:

> Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign customs officers or employees to regular duty at nights or on Sundays or holidays when such assignments are in the public interest.

The association is satisfied with the bill as passed, embodying the compromise as reached between the Treasury Department and the association. If, however, the section is to be reopened to amendment by suggestions from private interests, the association is forced back to insistence on consideration of its original proposal.

We wish to emphasize that the House bill is a compromise, crystallizing the present situation as to overtime compensation at border points, and leaving the Department full discretion to deal with those matters as the public interests may require.

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63 STATEMENT OF R. R. BOYNTON, DETROIT, MICH., REPRESENTING THE NATIONAL CUSTOMS SERVICE ASSOCIATION

Senator WALSH. Your name is R. R. Boynton?

Mr. BOYNTON. Yes, sir.

Senator WALSH. Your residence is Detroit, Mich.?

Mr. BOYNTON. Yes, sir.

Senator WALSH. You represent the National Customs Service Association?

Mr. BOYNTON. Yes, sir; chairman of the overtime committee of the National Customs Service Association. Mr. Frank, our attorney, has stated our case very clearly. The only thing is, if there is a question I will endeavor to answer it.

Senator VANDENBERG. I would like to ask Mr. Boynton if he is familiar with the protest that was made by the Detroit overtime committee, Mr. Anthony P. Geissler, chairman, in regard to this general problem in 1937?

Mr. BOYNTON. That dates back to the time of the opening of the bridge, Senator; that is the Ambassador Bridge from Detroit to Sandwich, Ontario. At that time the Department, utilizing its discretion under the last proviso of section 5 of the act of 1911, as amended, deemed it unfair to the ferry company between Detroit and Wind-

sor, on account of the decision of the Supreme Court in the *Niagara Falls bridge case* which is cited in Mr. Frank's statement, although I do not think he gave the citation, it is 257 U. S. 506. The ferry company was being required to pay for overtime compensation of customs officers on Sundays and holidays, not at night. The bridge company, on account of the decision in the *Niagara Falls bridge case*, would not be required to do so, and the set-up that was provided at that time was for officers assigned to the bridge to be given a day off a week at public expense in lieu of Sunday. The same arrangement was made for the ferries.

The protest that Mr. Geissler refers to there is predicated upon the law and the decision of Judge Tuttle in the *Port Huron-Sarnia* v. *Lawson case*, which decided that ferries were squarely in the law and should pay the overtime. Of course, there was a question, and a very large question of injustice, and it is recognized by the employees that it would be an injustice to require the ferries to pay the overtime and not require other facilities more modern to do the same. The law has not kept abreast of the change in facilities. When the bridge was built at Detroit and when the tunnel was built at Detroit they, to a large extent, displaced the ferries.

Senator VANDENBERG. Would you be in a position to state how Mr. Geissler's committee and their problem would be affected by this pending legislation?

Mr. BOYNTON. There would be no change. The problem would still exist, so far as they are con-

cerned, if there is no change in this section 8 as passed by the House. If the amendment which was advocated by the National Customs Service Association before the Ways and Means Committee on the hearing on H. R. 6738 had been incorporated into the law, it would have required bridges and any other facilities eventually to pay for Sunday and holiday service as overtime.

* * * * * *

64 Mr. SPINGARN (Mr. Stephen J. Spingarn, attorney, Office of the General Counsel, Treasury Department). Senator Vandenberg, the other day you asked us to prepare a brief statement for you on the Detroit customs situation. We have it here with us, and we will give it to you now.

Senator VANDENBERG. I would like to put it into the record after I have read it, Mr. Chairman.

Senator WALSH. Very well.

(The statement referred to is as follows:)

MEMORANDUM FOR SENATOR VANDENBERG

Certain customs employees at Detroit, represented by Mr. Anthony P. Geissler, contend that:

1. Customs inspectors are entitled to extra compensation under the Overtime Act (U. S. C., title 19, sec. 267) if they work between the hours of 5 p. m. and 8 p. m. or on a Sunday or holiday, even though such work is performed during regular 8-hour tour of duty; and

2. That the Secretary of the Treasury cannot properly authorize the assignment of customs employees to regular tours of duty on Sundays and holidays because there is no

authority of law for allowing compensatory time off to employees so assigned.

Under existing law the operators of International highway bridges and tunnels cannot be required to reimburse the United States for the compensation of customs employees assigned to such places for customs work at nights or on Sundays or holidays. [(*International Railway Co.* v. *Davidson* (1922) 257 U. S. 506.)], but customs facilities must be maintained at such places if required by the volume of traffic.

When the Ambassador Bridge was opened at Detroit on November 15, 1929, it was necessary to add 26 new inspectors to the local customs force to maintain customs facilities at the bridge for 24 hours each day and 7 days each week. The employees were assigned under a platoon system under which each employee assigned to duty at the bridge worked not more than 8 hours a day and not more than 6 days a week on his regular tours of duty. Sunday and night work was rotated among the men. In order to prevent discrimination a similar system was installed with respect to the customs facilities at the ferry docks at Detroit, and five additional inspectors were employed for this purpose. The customs inspection at the ferry docks had previously been performed on Sundays and holidays by customs inspectors who had already served on their regular tours of duty and these employees received extra compensation under the Overtime Act for the extra work, the Government being reimbursed by the ferry company for the extra compensation paid.

The assignment of customs employees to regular tours of duty at nights or on Sundays or holidays is clearly authorized by the

Overtime Act, section 624 of the Tariff Act of 1930 (U. S. C., title 19, sec. 1624), and sections 161 and 249 of the Revised Statutes (U. S. C., title 5, sec. 22 and title 19, sec. 3). A decision of the Comptroller General rendered on September 15, 1936 (16 Comp. Gen. 243), held that a former customs employee in the Michigan district was not entitled to extra compensation for services he performed on Sundays and holidays during the period 1929 to 1933.

It is not the purpose of section 8 of the H. R. 8099 to deprive any customs employee of overtime compensation to which he is entitled under existing law. On the contrary, it is designed to provide for the payment of extra compensation in cases where customs officers now perform overtime services for the benefit of private interests without receiving extra compensation.

The Treasury Department does not favor the employment of customs employees beyond their regular working hours where this can reasonably be avoided because the employees render more efficient service if permitted to enjoy regular intervals of rest and relaxation. It is also to be noted that if employees assigned to duty during the full week were permitted or required to work overtime regularly at nights or on Sundays and holidays, fewer employees would be needed and a reduction of the force would probably result.

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STATEMENT OF CLARENCE R. RUNALS, REPRESENTING THE INTERNATIONAL RAILWAY CO.

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Mr. RUNALS. * * * At the end of section 8 after the words "public interest" add the following:

> "Vessel" or "vehicle" as used herein shall not be construed to include a highway bridge or a highway tunnel, nor shall the maintenance or operation of such a bridge or of such a tunnel constitute the owner or operator thereof a common carrier within the meaning or application of this section.

* * * * *

APPENDIX D

LETTERS

1. *Letter of April 10, 1885, from the Collector of Customs at Detroit, Mich., to the Secretary of the Treasury (Report of the Secretary of the Treasury on the Collection of Duties, 1885, pp. 168–171)*

CUSTOMHOUSE, COLLECTOR'S OFFICE,
Detroit, Mich., April 10, 1885.

SIR: I have the honor to acknowledge the receipt of circular letter from the Department, dated the 1st instant, asking a report in writing as to what reductions are practicable in the customs force employed in this district, &c.

* * * * *

There are employed at the customs office at the city ferry eight officers. At this point boats are arriving from and departing for Windsor, Ontario (a place of about ten thousand inhabitants,) every five minutes, and in the summer month oftener. These boats are in motion from sunrise till 11 and 12 o'clock at night, according to the season. Large quantities of produce and dutiable goods of greater or less value are continually arriving by these boats daily. Hundreds, and during the summer months thousands, of persons cross and recross on these boats. Wagons, carriages, and vehicles of all kinds are

crossing and recrossing without cessation. All this business requires the constant and vigilant supervision of the force stationed there. * * * One officer of the force stationed here is on duty all night during the season of navigation, to receive reports and grant clearances to vessels.

* * * * *

At the Michigan Central and at the Grand Trunk Railway freight-depots are stationed six officers, three at each, whose duties are to attend to the inspection of all importations by rail arriving at these points, cording and sealing bonded goods, checking out contents of cars arriving in transit through Canada from eastern United States points, and which have been held for any reason, as for defective sealing, irregular manifests, &c. These officers are employed regularly from 7 o'clock A. M. till dark, and very often through the entire night, so that there may be no delay to the railroad traffic. Those stationed at the Michigan Central depot, in addition to their duties at that point, also perform the same duties with reference to cars arriving at the Wabash depot, half a mile below their station.

* * * * *

The boats of the Michigan Central Railroad each carry twenty-four cars at a load; those of the Grand Trunk carry, one of them fourteen and the other eighteen cars.

All of these boats run *nights, days,* and *Sundays,* with *no* cessation whatever, the year through; and *all cars* in transit between east and west arriving

at and departing from this port by the Michigan Central, Grand Trunk, and Wabash Railroads are *crossed on these boats.*

Six officers are employed on one of the Michigan Central, and a like number on one of the Grand Trunk boats, divided into reliefs of two men, and each relief working eight hours. On the other Grand Trunk boat three officers are employed, one man to each relief. On the other Michigan Central boat four men are employed, the extra man, when not needed on the boat, being assigned indifferently where most needed, but ordinarily he is employed to aid the regular reliefs in clearing the large passenger-trains arriving from the East, so that there may be the least possible delay and inconvenience to the travelling public.

* * * * *

In summing up, I am, therefore, compelled to say that if the Department desire to continue the present system of business, affording all the facilities that are now furnished railroads and transportation companies, it will be impossible to reduce this force. In other words, a reduction of the force must necessarily be accompanied by a reduction in the facilities now afforded these lines.

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W. LIVINGSTONE, Jr.,
Collector.

Hon. DANIEL MANNING,
Secretary of the Treasury,
Washington, D. C.

2. Letter of June 4, 1943, from the Commissioner of Customs to Francis M. Shea, Assistant Attorney General

TREASURY DEPARTMENT
BUREAU OF CUSTOMS
WASHINGTON

Seal
Office of the Commissioner

Address reply to
Commissioner of Customs

JUNE 4, 1943.

Honorable FRANCIS M. SHEA,
Assistant Attorney General,
Department of Justice,
Washington, D. C.

Attention: Mr. Paul Sweeney.

SIR: In connection with the case of *Howard C. Myers* v. *The United States*, in which the Court of Claims has held that customs officers and employees are entitled to overtime compensation under section 5 of the Act of February 13, 1911, as amended by the Act of February 7, 1920 (U. S. C. title 19, sec. 267), for services performed at night or on Sundays or holidays on regular tours of duty, representatives of your Department have requested further information from this Bureau as to (1) whether it has ever been the practice at any of the ports to pay overtime compensation for services performed on regular tours of duty, and (2) whether or not, up to the time of the institution of suit in the *Myers* case, the practice of assign-

ing customs employees to regular tours of duty at night and on Sundays and holidays was in effect at seaports as well as border ports.

It has never been the practice of the Customs Service to pay or collect from parties in interest overtime compensation under the above-mentioned Act for services performed during the regular tours of duty of officers or employees. It has been the practice throughout the country to collect and pay overtime compensation only for services in addition to the 44 hours or 48 hours per week required of the officers or employees for earning their regular pay.

At all times prior to the institution of the suit in the *Myers* case, and until recently when some regular tours of duty have been established because of the war, the practice of assigning customs officers and employees to regular tours of duty at night or on Sundays or holidays for the performance of services within the purview of the above-mentioned Act was not in effect at the seaports but was limited to the ports on the Canadian and Mexican borders where, because of continuous travel, such assignments were in the public interest.

Very truly yours,

[S.] W. R. JOHNSON,
Commissioner of Customs.

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